

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Government,

v.

HONORABLE GEORGE CARAM STEEH

No. 18-20421

CRAIG DAVID EVANS,

Defendant.

EVIDENTIARY HEARING

Tuesday, November 27, 2018

- - -

APPEARANCES:

For the Government:

SARAH WOODWARD, ESQ.
Assistant U.S. Attorney

For the Defendant:

COLLEEN FITZHARRIS, ESQ.
BRANDY ROBINSON, ESQ.

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Detroit, Michigan
Tuesday, November 27, 2018

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THE CLERK: Calling Case Number 18-20421,
United States versus Craig David Evans.

THE COURT: Good morning.

MS. WOODWARD: Good morning.

THE COURT: Would you like to state your
appearances?

MS. WOODWARD: Good morning, your Honor.
Sarah Woodward on behalf of the United States. With me at
counsel table is the case agent, Special Agent Kyle
Galbreath.

THE COURT: Good morning.

MS. ROBINSON: Good morning, your Honor.
Brandy Robinson and Colleen Fitzharris of the Federal
Defender Office on behalf of Craig Evans.

THE COURT: Welcome. Two days in a row.

MS. FITZHARRIS: Before we proceed, is it
possible to unhandcuff Mr. Evans?

THE COURT: Yes.

MS. FITZHARRIS: Thank you.

THE COURT: Okay. You can take a seat, and
we'll note that this is before the Court on a suppression

1 motion.

2 Ms. Woodward, would you like to proceed?

3 **MS. WOODWARD:** I'm sorry?

4 **THE COURT:** Would you like to proceed?

5 **MS. WOODWARD:** On which motion?

6 **THE COURT:** The supression motion.

7 **MS. WOODWARD:** Well, there are two supression
8 motions. There's a motion to suppress the search warrant
9 for lack of probable cause, and we're prepared to argue on
10 that today, and then there's a motion to suppress the
11 defendant's statement. Is that the one that you want us
12 to turn to first?

13 **THE COURT:** Whichever you would like to start
14 with.

15 **MS. WOODWARD:** Well, it's the defense motion.
16 So I would defer to them.

17 **MS. FITZHARRIS:** I think it would be best to
18 start with the evidentiary hearing. There are two issues,
19 and the warrant interplays with both. At issue is the
20 consent of whether Mr. Evans voluntarily consented the
21 search of the computer in the house, and that is tied up
22 with the validity of the warrant, and the end result is a
23 factual question.

24 So I recommend that we proceed with the
25 evidentiary hearing first, and finish with the legal

1 argument on both motions.

2 **THE COURT:** That sounds sensible.

3 **MS. WOODWARD:** We're just going to call one
4 witness this morning, and that witness will be Special
5 Agent Jeremy Forys.

6 Also let just me clarify, I introduced Mr.
7 Galbreath as a special agent. He is actually a task force
8 officer, but he is a border patrol agent.

9 **THE COURT:** Okay.

10 **MS. FITZHARRIS:** One other matter of
11 clarification, it is my understanding that Agent Galbreath
12 was present during the search and questioning of Mr.
13 Evans. Ms. Woodward suggested that he may be called as a
14 rebuttal witness, and so at this point until we know
15 whether Mr. Galbreath -- or Agent Galbreath is going to
16 testify, we ask that he be sequestered.

17 **THE COURT:** Ms. Woodward?

18 **MS. WOODWARD:** He is the case agent, and like
19 the defendant --

20 **THE COURT:** Agent in charge of the
21 investigation?

22 **MS. WOODWARD:** Correct.

23 **THE COURT:** I don't think there's a need to
24 sequester under those circumstances. We'll permit him to
25 remain in the courtroom.

1 **MS. WOODWARD:** We would like to call Agent
2 Forys at this time.

3 **THE COURT:** Yes.

4 **MS. WOODWARD:** Thank you.

5
6 **J E R E M Y F O R Y S**

7
8 being first duly sworn by the Court to tell the truth, was
9 examined and testified upon his oath as follows:

10
11 **THE COURT:** We will have you begin by having
12 you state your name, and spelling your last name.

13 **THE WITNESS:** Jeremy Forys, F-o-r-y-s.

14 **THE COURT:** Thank you. You may proceed.

15
16 **DIRECT EXAMINATION**

17 **BY MS. WOODWARD:**

18
19 **Q.** Where do you work?

20 **A.** I am a special agent with Homeland Security
21 Investigation here in Detroit.

22 **Q.** How long have you worked for Homeland Security
23 Investigation?

24 **A.** Approximately 10 years.

25 **Q.** And is that frequently referred to as HSI?

1 A. It is.

2 Q. Is HSI part of the Department of Homeland Security
3 or DHS?

4 A. That's correct.

5 Q. And so when did you become a special agent, in
6 approximately 2008?

7 A. In December of 2008.

8 Q. Before you became a special agent with HSI, what did
9 you do?

10 A. I was a federal air marshal.

11 Q. When was that?

12 A. April of 2002.

13 Q. Until --

14 A. December of 2008.

15 Q. Thank you. And did you work with the government
16 before you became an air marshal?

17 A. I did.

18 Q. What did you do before you became an air marshal?

19 A. I was an immigration inspector with the Department
20 of Justice, the immigration and naturalization service,
21 commonly known as the INS.

22 Q. And what was the time period that you worked for
23 INS?

24 A. August of 2000 until I became an air marshal in
25 April of 2002.

1 Q. And was INS also a part of the Department of
2 Homeland Security or was it something different?

3 A. No. The Department of Homeland Security was created
4 after 911 in 2003. So that was prior to that. It was
5 part of the Department of Justice.

6 Q. Thank you. So back to your as a special agent with
7 HSI, do you have a current assignment?

8 A. Yes. Currently for the last three years, I've been
9 working with our human trafficking task force.

10 Q. And what is the human security task force?

11 A. It's located in Taylor, Michigan. It's the Michigan
12 human trafficking, human smuggling task force. We follow
13 up leads that we gather from the border and other places
14 that involve possibly human smuggling and human
15 trafficking.

16 Q. And you said that is located in Taylor. Is that at
17 the Taylor Police Department?

18 A. Right at the police department.

19 Q. Do you work with other agencies besides HSI agents?

20 A. Yes, we do. We work with the border patrol, customs
21 and border protection, marine unit, and USCIS.

22 Q. What does USCIS stand for?

23 A. United States Citizenship and Immigration Services.

24 Q. Is that also a component of the Department of
25 Homeland Security?

1 A. Yes, it is.

2 Q. And you said that you investigate human trafficking
3 and human smuggling?

4 A. Mostly human trafficking.

5 Q. Does that include both sex trafficking and labor
6 trafficking?

7 A. It does.

8 Q. And how long have you been doing this work?

9 A. Approximately three years.

10 Q. Before you began working with the trafficking task
11 force, what did you do with HSI?

12 A. I was detailed to our airport office, which was more
13 of a general crimes. So I investigated everything that
14 HSI investigates, and prior to that, I worked in a group
15 that investigates work site enforcement, which is
16 employers hiring undocumented workers from other
17 countries.

18 Q. When you did work site enforcement, you were
19 investigating labor of undocumented workers, is that fair?

20 A. That's correct.

21 Q. Did you ever encounter labor trafficking?

22 A. We did. It's kind of a fuzzy line between the work
23 site enforcement and labor trafficking. So sometimes
24 cases that on their face looks like it would fit the work
25 site mold blend more into the labor trafficking.

1 Q. How would you define labor trafficking?

2 A. Egregiously abusing foreign nationals, mainly
3 putting them in unfair or inhumane circumstances, low pay,
4 no benefits. Basically taking advantage of people.

5 Q. Are you familiar with the investigation into the
6 defendant Craig Evans?

7 A. I am.

8 Q. When did you begin investigating the defendant?

9 A. In May of 2018.

10 Q. What started the investigation?

11 A. We received information from USCIS. We have an
12 individual that sits at our task force a couple days a
13 week, and actually is a conduit between USCIS and HSI.

14 Q. And again, USCIS, is the U.S. Citizenship and
15 Immigration services?

16 A. Yes, it is.

17 Q. So do you share information occasionally?

18 A. Yes, we do.

19 Q. Is it common or uncommon for you to get leads or
20 information from USCIS?

21 A. It is common.

22 Q. And why is there someone on your task force from
23 USCIS?

24 A. Because there is information that they gather
25 through their regular day-to-day activities which can lead

1 to a human trafficking investigation or labor trafficking
2 investigation. There are crimes that are committed that
3 they're not so much geared to investigate, and they turn
4 them over to us.

5 Q. And so what does USCIS do?

6 A. They work on benefits for non-Americans that come
7 into the country. So whether it's a visa or -- they also
8 do benefit investigations. So if someone is trying to
9 defraud the United States, they may look into that sort of
10 thing too. They have different functions.

11 Q. What did you learn about the defendant from USCIS?
12 What information did you receive?

13 A. We received information that Mr. Evans came into
14 USCIS. He was upset that his wife was not acting in a
15 function that he thought his wife should be, and wanted
16 her removed from the United States.

17 Q. And you said he came into USCIS. Is there a
18 physical location where this agency is located in the
19 metro Detroit area?

20 A. Yes, it's in Detroit on Jefferson Avenue.

21 Q. Is that at 11411 East Jefferson in Detroit?

22 A. Yes.

23 Q. This is a building open to the public?

24 A. It is.

25 Q. And normally who goes to this location?

1 **A.** Again, people seeking benefits in the United States.
2 They have to have their benefits adjudicated to see if
3 they are going to receive a benefit from the U.S., and
4 also people can come in like Mr. Evans to complain about
5 possibly being defrauded in this case.

6 **Q.** So the defendant physically went to the location on
7 Jefferson in Detroit, and reported essentially that he
8 wanted to have his wife deported, is that fair?

9 **A.** Yes.

10 **Q.** Do you know when this was?

11 **A.** Yes, it was May 2nd of 2018.

12 **Q.** And do you know who the defendant spoke with when he
13 went to USCIS?

14 **A.** Immigration Officer Adam Bailey.

15 **Q.** What else did the defendant tell Immigration Officer
16 Bailey?

17 **MS. FITZHARRIS:** Objection. It is not
18 relevant to what happened on the day of the search. It's
19 not relevant to whether Mr. Evans' statement is voluntary.
20 We are kind of pretty far afield at this point from the
21 date of the search on June 11th.

22 **THE COURT:** Ms. Woodward?

23 **MS. WOODWARD:** Yes, your Honor. The
24 defendant went to USCIS giving them information,
25 requesting that his wife be deported, and when the agents

1 went to his home with a search warrant, they were also
2 there to follow up on the report that he made to USCIS.

3 The question for the Court on whether Mr. Evans
4 was in custody is taken from the perspective of a
5 reasonable person. So having gone to USCIS himself and
6 make statements, he understood the agents when they came
7 to his home to be following up on his request. So it is
8 incredibly relevant to understanding whether his interview
9 at his home custodial or not.

10 **THE COURT:** Ms. Fitzharris?

11 **MS. FITZHARRIS:** Again, we don't have to go
12 through all the background in early May in order to
13 establish that they were following up. They also had a
14 warrant in hand, and that's something that's going to be
15 developed further, but I think we need to start talking
16 about June 11th because that's the date --

17 **THE COURT:** The Court will overrule the
18 objection and receive the testimony.

19 **MS. WOODWARD:** Thank you.

20 What else did you learn from Officer Bailey about
21 what the defendant said?

22 **A.** He made statements to Officer Bailey in reference to
23 that he was arrested recently on domestic violence
24 charges. He was concerned about what the victim may say
25 in that case. He was providing information that if anyone

1 asks, she wanted to dress up in this Hello Kitty type
2 clothing, and that there is a pink Hello Kitty room in his
3 house, but that's -- you know, don't worry about that.
4 That's from his daughter that lives with him, and he made
5 statements, by the way, I'm not a predator, which are
6 unusual statements that a law enforcement officer might
7 hear.

8
9 **BY MS. WOODWARD:**

10 **Q.** Did he also explain how old his wife was and where
11 her country of origin was?

12 **A.** He stated that met her online, and she was from the
13 Philippines, and he petitioned for her to come here, and
14 now he is trying to remove that and have her deported from
15 the United States.

16 **Q.** And how old was she?

17 **A.** He mentioned that she was 17 when they first
18 encountered each other online, and now she's a couple of
19 years older, but at the time she was 17.

20 **Q.** When they first met?

21 **A.** Online, yes.

22 **Q.** And what did Officer Bailey do with this
23 information?

24 **A.** He reached out to his supervisors, who in-turn
25 turned the information over to the task force officer that

1 sits in our group and my direct supervisor, and we started
2 to look into that.

3 Q. Is it fair to say that there were some red flags
4 that Officer Bailey noticed?

5 A. Oh, absolutely. What I previously mentioned about,
6 the predator comments, the Hello Kitty comments, and
7 there's a perceived motive that hey, this is the direct
8 witness in a domestic violence charge. So it seemed
9 pretty apparent to us that he didn't want her in the
10 country for a specific reason.

11 Q. With this information essentially given to your task
12 force to follow up on?

13 A. Yes, it was.

14 Q. Did Officer Bailey write a report about his
15 encounter with the defendant?

16 A. He did.

17 MS. WOODWARD: Your Honor, I've provided this
18 report to the Court under seal as Government Exhibit A to
19 this response. The Court has a copy, but I have more
20 copies here as well.

21 MS. FITZHARRIS: Ms. Woodward, are you going
22 to admit this as an exhibit?

23 MS. WOODWARD: Yes, it's attached to my
24 motion.

25 MS. FITZHARRIS: I understand, but I object.

1 It is hearsay.

2 MS. WOODWARD: My response is that this is an
3 evidentiary hearing.

4 THE COURT: The Court will overrule the
5 objection.

6 MS. WOODWARD: Thank you.

7

8 BY MS. WOODWARD:

9 Q. So Officer Forys, take a look at Government Exhibit
10 A --

11 MS. FITZHARRIS: There's an additional issue
12 that this was prepared by someone else, not Agent Forys,
13 and whether he has the ability or not to talk about this
14 report. There is a lack of foundation as well.

15 MS. WOODWARD: Your Honor, the report details
16 two visits that the defendant made to USCIS. I'm going to
17 proceed to ask Agent Forys about the defendant's second
18 visit. I think it is important for the Court to know,
19 again from the perspective of a reasonable person in the
20 defendant's shoes, he went not once, but twice to USCIS
21 requesting that they deport his wife, and that was -- what
22 he had done at the time the agents came to interview him
23 at his home.

24 THE COURT: All right. Again, the Court
25 will --

1 **MS. FITZHARRIS:** One additional issue, your
2 Honor, is that the document speaks for itself. There's no
3 reason for Agent Forys to go into the details of the
4 document if it has been admitted as substantive evidence.

5 **MS. WOODWARD:** I have very brief questions
6 about the document, your Honor.

7 **THE COURT:** All right. The Court will
8 overrule the objection.

9 **MS. WOODWARD:** Agent Forys, have you reviewed
10 this report written by Officer Bailey?

11 **A.** I have.

12
13 **BY MS. WOODWARD:**

14 **Q.** The report indicates that the defendant went to
15 USCIS not once but twice?

16 **A.** It does.

17 **Q.** So I think you testified that the first time that
18 the defendant went to USCIS was May 2, 2018?

19 **A.** That's correct.

20 **Q.** And when was the second time?

21 **A.** On May 16th of this year, 2018.

22 **Q.** And what happened on the second visit?

23 **A.** The defendant arrived at USCIS, and since his first
24 visit to USCIS, he had a hearing in his domestic violence
25 case, and was upset that the victim was there, and

1 believed that USCIS should have deported the victim from
2 the country, and she shouldn't have been there.

3 Q. Thank you. After you received this information from
4 USCIS, what did you do?

5 A. We reached out to the victim, and went to talk to
6 her and interviewed her.

7 Q. And did you interviewed her on May 30, 2018?

8 A. We did.

9 Q. And did she make statements about her relationship
10 with the defendant?

11 A. She did.

12 MS. FITZHARRIS: Objection. Relevance.
13 Again, this is very fair afield from the search and from
14 the statements on June 11th.

15 MS. WOODWARD: I'm moving on from the
16 statements and onto the search warrant.

17 THE COURT: All right.

18
19 BY MS. WOODWARD:

20 Q. And so after you spoke with the victim in this case,
21 what did you do next?

22 A. We had a meeting with the U.S. Attorneys, yourself,
23 and we drafted an affidavit for a search warrant of
24 Mr. Evans' residence.

25 Q. Was that another law enforcement officer that you

1 worked with on this case?

2 A. That's correct.

3 Q. Who was that?

4 A. Task Force Agent Robert Galbreath.

5 Q. Galbreath?

6 A. Yes.

7 Q. And was a search warrant, in fact, sworn out on
8 June 7th?

9 A. It was.

10 Q. Was that a federal search warrant?

11 A. Yes, it was.

12 Q. And after the search warrant was sworn out, what did
13 you do?

14 A. We went to the door, Mr. Evans' door on June 11th,
15 and we did a what we call a knock and talk. So we knocked
16 on the door, identified ourselves, myself as a special
17 agent, and Robert as a task force agent, and said we were
18 following up on Mr. Evans' claim at CIS.

19 Q. So you said "we", and then you said Robert. Was
20 this yourself and Task Force Officer Galbreath?

21 A. Yes.

22 Q. And so the two of you approached Mr. Evans' home?

23 A. That's correct.

24 Q. And where is his home?

25 A. In Sterling Heights, Michigan on Donley Drive.

1 Q. So when you approached the door, you had a search
2 warrant?

3 A. We did.

4 Q. But did you approach as a search team?

5 A. No. There were many officers on standby down the
6 streets, but it was just the two of us knocking on his
7 door.

8 Q. And you called that a knock and talk?

9 A. Correct.

10 Q. So you knocked on the door?

11 A. Yes, we did.

12 Q. Who answered the door?

13 A. Mr. Evans.

14 Q. What time of day was this on June 11th?

15 A. Early morning, 7:20 in the morning approximately.

16 Q. And when the defendant answered the door, what do
17 you do?

18 A. Again, identified ourselves.

19 Q. Would you have told the defendant that you were with
20 Homeland Security Investigations?

21 A. That's correct.

22 Q. And Task Force Agent Galbreath would have identified
23 himself as a border patrol agent?

24 A. Most likely a task force agent. He probably
25 wouldn't have bothered to mention the border patrol agent

1 because his duties are in line with Homeland Security
2 Investigations as well for the years he spent time with
3 us.

4 Q. So he had an assignment to work on this trafficking
5 task force?

6 A. That's correct.

7 Q. You identified yourself, and what did you do after
8 that?

9 A. Mr. Evans was very -- seemed very excited that we
10 were there following up. He seemed like finally someone
11 is here to listen to me. Please come in. He invited us
12 into his house.

13 Q. He invited you in?

14 A. Absolutely.

15 Q. And what did you tell him that you wanted to talk to
16 him about?

17 A. We wanted to follow up and hear his perspective in
18 his own words about his relationship with the victim, and
19 hear his side of the story. We mentioned that sometimes
20 he could have -- we would have follow up questions,
21 something that Immigration Officer Bailey didn't ask. So
22 we wanted to hear his side of the story.

23 Q. And you said that he was very excited to see you?

24 A. Oh, yes.

25 Q. Why did you decide to talk to him first without

1 telling him about the search warrant?

2 **A.** It's a strategic decision. Sometimes people, when
3 we display our search warrant, do not want to talk, or
4 they put a wall up or get defensive, and we wanted to hear
5 his side of the story.

6 **Q.** And so where did you go in the defendant's house?

7 **A.** He cleared space on his kitchen table.

8 **Q.** And did he invite you to sit down?

9 **A.** Yes, absolutely.

10 **Q.** What was his demeanor like?

11 **A.** He was very happy that we were there, and he was
12 elated.

13 **Q.** Did the defendant at any time that morning seem
14 drunk to you?

15 **A.** No.

16 **Q.** Did you smell any alcohol?

17 **A.** No, I did not.

18 **Q.** Did the defendant tell you that he was drinking?

19 **A.** No.

20 **Q.** Was his speech slurred?

21 **A.** No, it wasn't.

22 **Q.** And Agent Forys, do you see the defendant in court
23 today?

24 **A.** I do.

25 **Q.** Can you identify him for the record?

1 **A.** He is sitting to my left at defense table.

2 **Q.** And so did you talk to the defendant?

3 **A.** Yes.

4 **Q.** Who led the interview?

5 **A.** I did.

6 **Q.** How did you start the interview? What did you ask
7 the defendant?

8 **A.** Open-ended questions, just please go ahead and start
9 from square one, if you can, and tell me how you met, and
10 progress through how we're sitting at the table today. I
11 asked him to the best of his abilities to state
12 chronological and tell me what's going on.

13 **Q.** And so you were talking about his relationship with
14 the victim in this case, is that fair?

15 **A.** Yes.

16 **MS. FITZHARRIS:** Objection, your Honor, to
17 the repeated use of the word "victim." Mr. Evans is not
18 charged with any offense related to his wife. She is not
19 a victim in any of the charged crimes. I think it is
20 unduly prejudicial and unnecessary to use that word.

21 **THE COURT:** If I were a jury, I might be
22 incline to sustain your objection, but I'm not going to be
23 influenced by the moniker. The Court will overrule the
24 objection.

25 **MS. WOODWARD:** And just as to following the

1 facts here, the victim is referred to as V-1 in the search
2 warrant and other documents. So I can call her V-1 if the
3 Court prefers.

4 **THE COURT:** I don't really care.

5
6 **BY MS. WOODWARD:**

7 **Q.** And so the defendant told you about how he met the
8 victim, is that right?

9 **A.** That's correct.

10 **Q.** What did he tell you?

11 **A.** He mentioned that, I believe, March of 16, that they
12 met online on a website called Filipino Cupid.

13 **Q.** How old was the victim at that time?

14 **A.** Seventeen.

15 **Q.** At some point did the defendant travel to the
16 Philippines to meet her and marry her?

17 **A.** He did.

18 **Q.** What did the defendant say about the victim's
19 family?

20 **A.** They were very poor, and he spent a lot of his money
21 to help them out, buy them couches. I believed he
22 mentioned a toilet, some things to make their household a
23 little more comfortable in the Philippines.

24 **Q.** And did he talk to you about getting married to the
25 victim in the Philippines?

1 **A.** He did, but he mentioned that as a quote, unquote,
2 biblical marriage, not a legal marriage at that time in
3 the Philippines.

4 **Q.** And did he offer to show you things about what he
5 was telling you?

6 **A.** He did. He had a receipt from a hotel dated,
7 showing that he had to pay for sheets because he said that
8 the victim stained the sheets, alluding to --

9 **MS. FITZHARRIS:** Objection. A lot of this
10 testimony about what the substance of the conversation and
11 Mr. Evans' answers is not relevant to the issue of whether
12 his statements were voluntary, whether he was in custody,
13 whether his consent was valid.

14 We can talk about -- I think it is relevant to
15 talk about the specific general nature of the questions,
16 but getting in the substance of Mr. Evans' answers is not
17 relevant.

18 **THE COURT:** Ms. Woodward?

19 **MS. WOODWARD:** Again, your Honor, this is
20 from the perspective of a reasonable person in defendant's
21 shoes. What we're getting to is that the defendant goes
22 to get some items to show to the agents which shows his
23 freedom of movement throughout the house.

24 **THE COURT:** The Court will overrule the
25 objection.

1 BY MS. WOODWARD:

2 Q. So he told you something about a receipt from a
3 hotel. Did he get that receipt for you?

4 A. He did.

5 Q. Did he retrieve other items to show you?

6 A. Yes, he did. In the back room of his house, he had
7 a closet, and the top part of that closet was a scrapbook,
8 and it had some items in there, some photographs, and it
9 had the receipt that he wanted to show us.

10 Q. You said at first you were at the kitchen table?

11 A. Yes.

12 Q. Did you and Task Force Officer Galbreath and the
13 defendant move about home?

14 A. Yes. We went over -- we were more than happy to see
15 what he wanted to show us. So he freely walked over
16 there, and we just, you know, walked with him in the back
17 room.

18 Q. And he showed you these items?

19 A. He did. He brought them back to the kitchen table
20 and he showed us. He brought the book back with him.

21 Q. At some point was the defendant contacted by his 12
22 year old son?

23 A. Yes, repeatedly. I believe that he kind of denied
24 either the text or the phone call because we were in the
25 middle of talking, and he didn't seem like he wanted to be

1 bothered with his son at that time.

2 Q. Okay. This was at the kitchen table?

3 A. That's correct.

4 Q. And the defendant's 12 year old son was contacting
5 him on the phone, is that right?

6 A. He was trying to, yes.

7 Q. And at first was the defendant not responding to
8 that contact?

9 A. At first he wasn't. It was repeated calls, and then
10 his son came to the door. So someone had driven him to
11 the house.

12 Q. And what was your response? Did you say anything to
13 the defendant about responding to his son?

14 A. Yes. I said please answer the phone. You don't
15 know what kind of emergency it could be or whatever, and
16 he repeatedly said this is way more important than my son.

17 Q. Did you offer to leave or to stop speaking with him
18 so he could speak to his son?

19 A. We absolutely did.

20 Q. And what time was this?

21 A. I would assume sometime in mid-interview. I would
22 say eight, 8:15, 8:30, before the execution of the search
23 warrant.

24 Q. At some point his son did come to the home?

25 A. Yes, he did.

1 Q. And what was your understanding of why his son was
2 there?

3 A. I believe it was he didn't have his backpack with
4 some of his school books, and he needed to get to school.
5 So this goes to that 8:00 time frame.

6 Q. During the time of contact with his son, were you
7 encouraging the defendant to prioritize his son over you
8 and Task Force Officer Galbreath?

9 A. Yes, I absolutely did. I even mentioned that we can
10 come back at a different time to do this. There is no set
11 time frame or anything like that, and he again said that
12 this was more important.

13 Q. So is it fair to say that he requested or he wanted
14 you to stay?

15 A. That's correct.

16 Q. And during your interview with the defendant, did he
17 also move to go outside and smoke cigarettes?

18 A. Yes, he did. He had like a back porch off the back
19 of his home, and he would go outside and take often breaks
20 and smoke cigarettes every 10-15 minutes, and he was out
21 there by himself, and we were just sitting at the kitchen
22 table waiting for him to get done.

23 Q. The first portion of the interview where you talked
24 about defendant's relationship with the victim, about how
25 long did that last before you moved to speaking to him

1 about his electronic devices?

2 A. Probably almost a good two hours.

3 Q. And so at some point did you move the conversation
4 to ask for permission to look at his electronic devices?

5 A. Yes, we did. We were still at that point talking
6 about his relationship with the victim, and talked about
7 maybe there were some communications on his phone that
8 would back up his story with the victim's mother and her
9 arranging this marriage, alluding to that it was a
10 fraudulent marriage, and I said, well, what would be great
11 is if we could take a forensic look into this computer,
12 and that I had an agent that could stop on his way to work
13 and come by the house and do an extraction. So maybe we
14 could follow through with some kind of deportation.

15 Q. So you were asking him for permission to look at his
16 devices relating to his complaint about the victim's
17 status in this country, is that fair?

18 A. That's fair, yes.

19 Q. And you mentioned that another agent could stop by
20 and do an extraction. What does that mean?

21 A. An extraction would be like a forensic copy of an
22 electronic device that could be easily scanned through and
23 look for evidence could be admitted possibly in a case or
24 trial.

25 Q. Is that something that you do, what you call knock

1 and talk?

2 A. From time to time, yes. It happens all the time.

3 Q. Is it a way to get the data off of a device, but
4 still leave the device with the owner?

5 A. Absolutely. One, it is very convenient, but two, it
6 is an exact forensic copy of it.

7 Q. Is that what you were offering to do in this part of
8 the conversation, copy the device, but leave the device
9 with him?

10 A. Yes.

11 Q. Did the defendant's demeanor change at this time?

12 A. Completely. He was a completely different person
13 after that conversation.

14 Q. How so?

15 A. He kind of just stared at the consent form that I
16 had. He began smoking, chain smoking at the table. He
17 was no longer going outside to smoke, which is what he had
18 done the prior two hours or so that we were there, and he
19 was continuously just kind of procrastinating, like
20 staring at the paper, and then he said, okay. I'll do it,
21 and signed off on it.

22 Q. So the demeanor that you described for the first
23 part of the interview, was happy to see you, excited?

24 A. Yes.

25 Q. And then the demeanor when you were talking about

1 consent to look at his devices was different?

2 A. Yes.

3 Q. Did you explain to him the form, that it was
4 voluntary for him to decide whether to give permission?

5 A. Absolutely, and even to the point where he even
6 provided the password.

7 MS. WOODWARD: I will hand the witness what
8 has been marked Government Exhibit B. This was submitted
9 to the Court. I believe it is attached to the other
10 response, but I'll give everyone a copy here as well?

11 THE COURT: Okay.

12
13 BY MS. WOODWARD:

14 Q. Looking at Government Exhibit B, what is this form?

15 A. This is -- it states Immigration and Customs
16 Enforcement Computer Forensic Worksheet. Immigration and
17 Customs Enforcement like our parent agency over HSI. It
18 has two divisions.

19 Q. And so is this the form that you discussed with the
20 defendant?

21 A. It is.

22 Q. And is this the form that you said that he was
23 staring at for sometime?

24 A. Yes.

25 Q. He ultimately signed it?

1 A. He did, yes.

2 Q. And since you have a search warrant, why did you ask
3 the defendant for consent?

4 A. Again, it was a strategic decision to see what his
5 response would be when we handed it over, and it did
6 elicit a response.

7 Q. And that response was the demeanor change that we
8 have been discussing?

9 A. Yes.

10 Q. Is it fair to say that the defendant was nervous at
11 this time?

12 A. Extraordinarily nervous.

13 Q. Did he mention to you that he was concerned about
14 pornography on his phone?

15 A. He did. He mentioned, I believe, more like bondage
16 type of pornography, and we stated to him that's not an
17 issue as long as there's not pornography with minors or
18 anything like that on his phone.

19 Q. And after the defendant signed this consent form,
20 what did you do next?

21 A. I handed over a copy of the federally signed search
22 warrant.

23 Q. So at the time you told him that you were there with
24 a search warrant?

25 A. Correct, and there would be some individuals that

1 would be coming into the house.

2 Q. So you shifted the interview now to the execution of
3 a search warrant?

4 A. That's correct.

5 Q. And at this time did other people enter the home as
6 part of the search team?

7 A. Yes, there were the computer forensic guys that we
8 had on standby. They came in, and were ready to look at
9 digital media that was contained in the house.

10 Q. And those were folks that had been waiting somewhere
11 else while you spoke to the defendant, correct?

12 A. Yes.

13 Q. Was the defendant placed under arrest?

14 A. No, he was not.

15 Q. Did you read him his Miranda Rights?

16 A. We did.

17 Q. Why did you read him his Miranda Rights if you
18 hadn't arrested him?

19 A. Because we were letting him know that he did have
20 certain rights at this point. He didn't have to speak to
21 us. He was free to stay silent, get an attorney at that
22 time. So we just, as overly safe measure, we didn't have
23 to, but decided to give him the Miranda Rights.

24 Q. Who gave him his Miranda Rights?

25 A. I did.

1 **Q.** How did you do that?

2 **A.** We have a statement of rights form that outlines
3 each of those rights that he has a person, a U.S. citizen
4 in this country.

5 **Q.** So did you personally go over the form with him?

6 **A.** We did line by line, and I believe we had initial
7 him each line to say that he understood that particular
8 line.

9 **MS. WOODWARD:** I'm going to hand the witness
10 what has been marked as Government Exhibit C.

11 **THE COURT:** Okay.

12

13 **BY MS. WOODWARD:**

14 **Q.** Agent Forys, now that everyone has a copy of
15 Government Exhibit C, what is this?

16 **A.** This is our standard statement of rights form. It
17 basically has the Miranda Warnings on it.

18 **Q.** Did you just hand this to the defendant and asked
19 him to read it to himself, or did you do something
20 different?

21 **A.** We placed it front of him. We read them to him, and
22 asked him if he understood each one, and then he initialed
23 each line.

24 **Q.** You handed him the form and read it out loud,
25 correct?

1 A. Correct.

2 Q. And after you read it out loud, you asked him to
3 initial each line?

4 A. Reread it, and initial it if he understood each
5 line.

6 Q. Did he express to you in any way that he didn't
7 understand?

8 A. No, not at all.

9 Q. Did he have any questions for you about any of these
10 rights?

11 A. No.

12 Q. But you told him that he had the right not to speak
13 with you?

14 A. Absolutely. That's one of the rights that we read.

15 Q. And I see some writing on the second half of this
16 form. What are we looking at here?

17 A. The waiver form where the bottom half of it?

18 Q. Correct. Whose signatures do we see?

19 A. We see his printed name, his signature and date, my
20 signature underneath Mr. Evans' and the date, and Task
21 Force Agent Galbreath's signature and date.

22 Q. Were the three of you going over this form together?

23 A. Yes, we were all sitting at the kitchen table.

24 Q. I also see a notation on the left hand side that
25 looks 9:50. What is that?

1 **A.** 09:50 is -- represents 9:50 a.m. in the morning,
2 military time.

3 **Q.** Who wrote that and why?

4 **A.** I believe -- that doesn't look like my handwriting.
5 Most likely Agent Galbreath's handwriting.

6 **Q.** What would the significance of that time be?

7 **A.** Just to notate what time the rights were read to
8 him.

9 **Q.** That's when the form was either completed or begun?

10 **A.** Yes. So it was pretty quick. It would have been
11 within a minute or two, if this was most likely when it
12 was completed. So I would say two minutes before we began
13 to read the rights.

14 **Q.** And at the time that you went over this with the
15 defendants, you were in the home for over two hours,
16 correct?

17 **A.** Correct.

18 **Q.** Had he consumed any alcohol while you were present?

19 **A.** No.

20 **Q.** Did he seem confused or slur his speech when you
21 went over the form with him?

22 **A.** No.

23 **Q.** And did he ultimately agree to continue to talk to
24 you?

25 **A.** He did.

1 Q. After he signed the waiver, what topic did you speak
2 about? Were you still talking about the victim or
3 something different?

4 A. We were speaking more about the possibility of child
5 pornography in the home.

6 Q. So you moved to child pornography?

7 A. Correct.

8 Q. And did the defendant make statements to you about
9 child pornography ultimately?

10 A. He did. At first he mentioned there would be
11 clothes --

12 **MS. FITZHARRIS:** Objection to the substance
13 of Mr. Evans' statement. It is not relevant to the
14 question of voluntariness.

15 **THE COURT:** Ms. Woodward?

16 **MS. WOODWARD:** I can move on, your Honor.

17 **THE COURT:** All right.

18
19 **BY MS. WOODWARD:**

20 Q. What was his demeanor during this time? Was it the
21 same as it was the first part of the morning?

22 A. No, he was very nervous as he was when he initially
23 brought out the electronic media consent form. He stayed
24 pretty nervous at that point.

25 Q. And while you were interviewing the defendant, were

1 there other members of your team doing other actions in
2 the home?

3 **A.** Yes, there were people in the house searching
4 different rooms in the house. There was a large amount of
5 electronic media in his living room area that was
6 immediately adjacent to the kitchen. So there were agents
7 in there doing forensic extractions on site.

8 **Q.** And forensic extraction on site, you mean that there
9 were agents starting to look at what was on his electronic
10 devices?

11 **A.** They do a quick what's called a preview of a device,
12 and during that preview, it was immediately apparent that
13 there was a large amount of child pornography on the
14 device that they were looking at.

15 **Q.** Once the child pornography was found, was the
16 defendant arrested that day?

17 **A.** He was arrested later that morning.

18 **Q.** Was that as a result of finding the child
19 pornography on his devices?

20 **A.** That's correct.

21 **Q.** We talked about the Miranda Rights that you went
22 over with the defendant, and then he continued to speak to
23 you. While you continued to interview him about child
24 pornography, without getting into what he said, did he
25 ever ask you about those rights again, or say that he

1 wanted to exercise his right to remain silent, or that he
2 wanted to have a lawyer?

3 A. No, never.

4 Q. Did those rights come up again at any point during
5 the rest of your interview about child pornography?

6 A. Not from him. I did not reread his rights. There's
7 no need for that.

8 Q. There's just that one discussion where he -- you
9 went over the form -- went over the rights, and he, signed
10 it, correct?

11 A. Correct.

12 MS. WOODWARD: I have no further questions.

13 THE COURT: Thank you, Ms. Woodward. Ms.
14 Fitzharris?

15
16 CROSS EXAMINATION

17
18 BY MS. FITZHARRIS:

19
20 Q. Good morning, Agent Forys.

21 A. Good morning, ma'am.

22 Q. Before you started working at HSI, you had a long
23 career in law enforcement?

24 A. Yes.

25 Q. An air marshal is kind of like a police officer on a

1 plane?

2 A. In some sorts, yes.

3 Q. And in your various law enforcement capacities,
4 you've received training?

5 A. Yes.

6 Q. Training in how to identify mental health issues in
7 a person that talking to?

8 A. That's not really specific things that we get into.
9 That's more of kind of the newer thing, but I'm not a
10 mental health professional in any way, shape or form.

11 Q. But you have received training how to identify
12 issues regarding mental health?

13 A. Yeah, if there was someone like you mentioned air
14 marshal, if someone was acting erratically, not just
15 generalized, not necessarily a terrorist trying to
16 overtake the plane, but yeah, there's some general.

17 Q. And on planes people drink alcohol?

18 A. Yes.

19 Q. And when people drink alcohol, sometimes they get a
20 little out control?

21 A. Absolutely.

22 Q. And sometimes you have to interact with people that
23 are drunk?

24 A. Absolutely.

25 Q. Perhaps in your own personal life, you have seen

1 people that were drunk as well?

2 A. I have witnessed it.

3 Q. Have you received any training in your law
4 enforcement capacity as to how to spot signs of
5 intoxication?

6 A. Very general things that's not the concentration of
7 law enforcement training. I'm not a road DUI cop or
8 anything like that, nor have I ever been.

9 Q. But you did receive training and how to spot signs
10 of intoxication?

11 A. I think anybody can spot that if it's at a point
12 yes. It is depending on where that line is I would say.

13 Q. You did receive training as to how to look for signs
14 of intoxication?

15 A. If I have, I don't recall an exact class where I sat
16 down for hours like our general training block is and
17 said, this is what intoxication looks like. I think that
18 getting to this point in life, everybody knows whether
19 someone is drunk or not.

20 Q. And sometimes with intoxication people ramble?

21 A. That could be.

22 Q. Hard to keep them focused?

23 A. I'm sure that could be as well.

24 Q. Yes or no, in your experience as an law enforcement
25 officer or a person talking to drunk people, did you

1 notice it is hard to keep a drunk person focused?

2 A. Absolutely.

3 Q. And sometimes people who were drunk repeat
4 statements?

5 A. I'm sure that's true.

6 Q. Yes or no?

7 A. Yes.

8 Q. Okay. Sometimes they respond to questions slowly?

9 A. Yes.

10 Q. Sometimes they respond quickly?

11 A. I'm sure of that, yes.

12 Q. They get defensive?

13 A. Yes.

14 Q. Have a hard time walking?

15 A. Yes.

16 Q. Look disheveled?

17 A. Yes.

18 Q. And it's hard to keep them focused on a straight
19 train of thought?

20 A. Yes.

21 Q. On June 11th, when went to Mr. Evans' home, you
22 noted that it was extremely hard to keep Mr. Evans on a
23 straight train of thought?

24 A. Yes.

25 Q. Throughout the entire time?

1 A. Yes, he was all over the place, the same as the
2 interview at CIS by Adam Bailey. He mentioned that he was
3 all over the place.

4 Q. Wasn't focused?

5 A. Uh-huh.

6 Q. Yes?

7 A. Yes.

8 Q. He switched topics?

9 A. Yes. He would not stay on chronological pace.

10 Q. Had a hard time, stumbled a little bit walking
11 around?

12 A. Not more than -- it wasn't anything crazy.

13 Q. You can got house about 7:20 in the morning?

14 A. That's correct.

15 Q. And you would agree with me that it's possible for
16 someone to be drunk after a heavy night of drinking the
17 night before the next morning?

18 A. I think anybody can be drunk anytime.

19 Q. But if somebody drank an excessive quantity in the
20 evening, they could still be drunk in the morning?

21 A. I'm sure theoretically that's correct.

22 Q. In your law enforcement training, have you ever seen
23 somebody who has been pulled over for drunk driving early
24 in the morning?

25 A. Yes. I was never the officer of that, but I'm aware

1 that has happened.

2 Q. By the time you arrived at the house, you had
3 applied for a search warrant?

4 A. Yes, that's correct.

5 Q. And you identified four different crimes that you
6 were investigating?

7 A. That sounds close to right, but I would have to
8 revisit the search warrant to see what exactly the crimes
9 were.

10 Q. You were investigating suspected child pornography?

11 A. Correct.

12 Q. Sex tourism?

13 A. Yes.

14 Q. Force labor or human trafficking?

15 A. Yes, that was on cusp of that, but I don't know that
16 we were pursuing that charge.

17 Q. On direct examination you did talk about how you
18 were investigating human trafficking?

19 A. Yes, as the lead came in.

20 Q. You're part of the human trafficking unit?

21 A. Right, but I'm not tied to one particular type of
22 investigation. I'm not in the child pornography group,
23 and clearly we're talking about child pornography.

24 Q. You were there because you had some concerns about
25 human trafficking?

1 **A.** There were some outside concerns with relating to
2 the victim's mother.

3 **Q.** And you were also there investigating cyber
4 stalking?

5 **A.** Cyber stalking? Can you clarify what that means in
6 general?

7 **MS. WOODWARD:** I object, your Honor. This
8 witness is not the affiant of the search warrant, and to
9 ask him exactly what was in it when it was not his
10 affidavit, I'm not sure this gets us anywhere.

11 **THE COURT:** Ms. Fitzharris?

12 **MS. FITZHARRIS:** If Mr. -- if Agent Forys was
13 relying on the search warrant, then presumably he read it.
14 Agents shouldn't, you know, just blindly rely on warrants.
15 There is a requirement that they read them.

16 These are the crimes specifically listed in the
17 warrant. Agent Forys was there with Agent Galbreath who
18 was the affiant of the warrant. It would seem to me like
19 they would have communications, and so he would be aware
20 of the nature of the crimes that they are investigating.

21 **THE COURT:** Overrule the objection.

22

23 **BY MS. FITZHARRIS:**

24 **Q.** If I showed you a copy -- did you read the warrant
25 before you executed it?

1 **A.** Yes.

2 **Q.** If I showed you a copy of the warrant, would that
3 refresh your recollection of the crimes that you were
4 investigating?

5 **A.** Sure, if you have a copy of it.

6 **Q.** Agent Forys, I handed to you what was previously
7 submitted as Defense Exhibit A as part of the motion to
8 spruce. It's a copy of the search warrant application?

9 **A.** Yes, ma'am.

10 **Q.** Please turn to Page 1, and look at Paragraph 2.

11 **A.** Okay.

12 **Q.** Does reviewing that paragraph remind you what crimes
13 you were investigating that day?

14 **A.** Yes, 18 U.S.C. 2261(a) stalking. I didn't see it
15 referred to as cyber stalking. I apologizes.

16 **Q.** That's all right. Thank you. But you didn't tell
17 Mr. Evans that you were there to investigate him for those
18 crimes?

19 **A.** To -- I did not read to him line by line the search
20 warrant.

21 **Q.** When you arrived at the door at 7:20 in the morning.

22 **A.** Absolutely not.

23 **Q.** You said that you were there to investigate his
24 wife?

25 **A.** We were following up on his complaint at USCIS that

1 he was adamant that his wife should be removed from the
2 country.

3 Q. You were not alone when you went to the house?

4 A. No, I was not.

5 Q. You were there with Agent Galbreath?

6 A. I was.

7 Q. He is also a member of law enforcement?

8 A. He is.

9 Q. And you -- when he answered the door, you identified
10 yourself as a member of law enforcement?

11 A. We did.

12 Q. Showed a badge?

13 A. We did.

14 Q. Were you dressed the way you are now?

15 A. More casually.

16 Q. Slacks?

17 A. Might have had on jeans. I don't remember my
18 attire, but more casual than today.

19 Q. Were you wearing a service belt?

20 A. I don't have a service belt, like, per se, like a
21 street cop or anything like that. I wear a regular tan
22 leather belt generally.

23 Q. Do you have a service weapon?

24 A. Yes.

25 Q. Did you have it on that day?

1 A. Of course.

2 Q. And it was on your waist?

3 A. Of course.

4 Q. Were you wearing a jacket?

5 A. Or a hoodie or some kind of cover over it. I just
6 generally don't randomly walk around with a gun exposed.

7 Q. And did you have handcuffs with you?

8 A. Yes, I believe I did.

9 Q. Did Agent Galbreath have a service weapon?

10 A. I imagine he did. I didn't frisk him.

11 Q. But he would usually carry one?

12 A. He is an outstanding officer. He would have had his
13 gun.

14 Q. And you saw it that day?

15 A. I didn't see it because I'm sure he had cover on as
16 well.

17 Q. And he also had handcuffs?

18 A. I can't speak to the handcuffs.

19 Q. So there were two of you?

20 A. Correct.

21 Q. And Mr. Evans was alone in the house?

22 A. Correct.

23 Q. There was a dog?

24 A. Yes.

25 Q. You told him that he needed to take the dog outside?

1 A. I don't know -- I'm not a vet, so I can't really
2 speak to the dog being healthy, rabid or whatnot. So with
3 us trying --

4 Q. Yes or no. You told him to take the dog outside?

5 A. I believe so.

6 Q. You don't believe so?

7 A. I believe so. I don't recall either way about the
8 dog, but I mean, it seems possible.

9 Q. The table that you were sitting at in the kitchen,
10 it's rectangular?

11 A. It's a smaller table. It's rectangular or square.
12 I'm not sure of the shape.

13 Q. It was pushed up against the wall?

14 A. There was some kind of a barrier, like a half wall
15 or something. It was in the middle of the room.

16 Q. But there were only three sides that you could sit
17 on?

18 A. That sounds right.

19 Q. And Mr. Evans sat in the middle between you and
20 Agent Galbreath?

21 A. Correct. I was immediately -- Agent Galbreath was
22 sitting across from me, and Mr. Evans was to my left to
23 Agent Galbreath's right.

24 Q. So just to visualize, Mr. Evans is in the center,
25 you know, kind of like the short end of the table?

1 A. Okay.

2 Q. And one of you is to his left?

3 A. Yes.

4 Q. And one to his right?

5 A. Correct.

6 Q. And you mentioned that Mr. Evans went outside to
7 smoke?

8 A. Several times.

9 Q. When he went out, you can see from the kitchen table
10 outside on the patio?

11 A. Yes.

12 Q. So you could see Mr. Evans while he was smoking?

13 A. Yes, at times he was standing in the doorway talking
14 with us, chitchatting.

15 Q. He was never out of your eyesight?

16 A. Not really.

17 Q. When he went to get the photo albums, there's an
18 open floor plan in the house?

19 A. I'm -- not really an open floor plan.

20 Q. What I mean by that from that -- from the kitchen,
21 you can see the living room?

22 A. Yes.

23 Q. And when Mr. Evans got the photo album, he was not
24 outside of your eyesight?

25 A. He wasn't in the living room.

1 Q. But you followed him?

2 A. Of course.

3 Q. All right. You saw him at all times?

4 A. Yes.

5 Q. When you were asked -- when you began the
6 conversation, you asked about Mr. Evans' relationship with
7 his wife, and you had concerns that he engaged sex
8 tourism?

9 A. We were there to hear his side of the story in the
10 very beginning, and asked him to tell us his details on
11 what went on in his life with his victim.

12 Q. You were there with a warrant to search for evidence
13 of sex tourism?

14 A. At some point we were planning on executing that
15 warrant.

16 Q. You had it with you at all times?

17 A. Yes.

18 Q. And you came armed with that warrant?

19 A. We had that warrant with us, yes.

20 Q. And so you asked Mr. Evans about his travels to the
21 Philippines?

22 A. Correct.

23 Q. You asked about whether he engaged -- whether he
24 took photos of his wife?

25 A. He offered that information up that he took photos

1 of his wife.

2 Q. You asked him questions about those photos?

3 A. About like if he she was underage? Is that what you
4 are asking?

5 Q. Yes.

6 A. Yes.

7 Q. And as you know, it's not illegal to take a photo of
8 a person over 18?

9 A. I do know that law.

10 Q. And so you asked specifically whether he took photos
11 of his wife before she turned 18?

12 A. Correct.

13 Q. You asked about whether she was topless?

14 A. I don't know if we got into that much of the
15 specifics of it.

16 Q. Did you ask whether he took photos of her genitals?

17 A. I don't know that we got, again, into that much of
18 that. I think we probably left it as nude or clothed.

19 Q. You also ask him about any sexual contacts he had
20 with his then fiancée?

21 A. I believe that's correct.

22 Q. And you asked all of these questions before giving
23 Miranda Warnings?

24 A. This was all along the story of -- I mean, the
25 answer to the question is yes, before Miranda Warnings.

1 Q. When he was answering your question, he rambled?

2 A. I mean, he was like a people that we've interviewed
3 before, yes. I mean, he just talked at his own pace.

4 Q. Hard to keep focus?

5 A. I just assumed that's how he talked.

6 Q. Hard to focus?

7 A. He was all over the place.

8 Q. And before you gave Mr. Evans the warrant and the
9 consent form, you had been there approximately two, two
10 and a half hours?

11 A. If we got there at 7:20 and knocked on the door, the
12 consent form I would say around 9:30. So about two hours
13 and 10 minutes roughly.

14 Q. You're asking questions about taking photos?

15 A. Sure.

16 Q. The marriage?

17 A. Yes.

18 Q. And any travel?

19 A. Yes.

20 Q. And his relationship with his wife?

21 A. Yes.

22 Q. And his domestic violence charges?

23 A. Yes, he offered that very freely.

24 Q. And all before giving Miranda Warnings?

25 A. Correct.

1 Q. When you gave Mr. Evans the consent form -- I will
2 approach and hand you a copy of what's been marked as
3 Government Exhibit B. That's the consent form that you
4 gave Mr. Evans?

5 A. Yes, it is.

6 Q. There are six paragraphs on the form?

7 A. Yes, that's correct.

8 Q. Four of the paragraphs have blank spots?

9 A. That is correct.

10 Q. First is the signatory's name?

11 A. Yes, that's correct.

12 Q. Did you write that?

13 A. That's my handwriting.

14 Q. The second is for an address?

15 A. Yes, that's correct.

16 Q. And you wrote the address in there?

17 A. Yes, that's my handwriting.

18 Q. The third blank is that the person -- establishes
19 that the person has a legal right to consent to the
20 search?

21 A. Yes.

22 Q. And you filled in that blank spot?

23 A. The third blank spot we're referring to?

24 Q. Yes?

25 A. Where it says any and all electronic media at the

1 residence?

2 Q. Yes.

3 A. Yes, that's my handwriting.

4 Q. But the sentence as you have written it says: I
5 state that I have standing to consent to such a search and
6 seizure due to the fact that I am the --

7 A. Yes --

8 Q. -- any and all electronic media at the residence in
9 relation to the computer system media or devices?

10 A. That's correct.

11 Q. That doesn't make sense, does it?

12 A. It is what it is. This is -- we're filling it out
13 and helping him along, and then he can either sign it or
14 not sign it.

15 Q. But it does not actually establish that he is the
16 owner of the devices?

17 A. I'm sorry?

18 Q. It does not -- the form does not state that he is
19 the owner of the devices?

20 A. It states the media at his residence.

21 Q. It does not state that he is the owner of the
22 devices?

23 A. No.

24 Q. And then the fourth paragraph you also wrote -- you
25 filled that in, right?

1 A. With the word "English"?

2 Q. Yes.

3 A. That's again my handwriting.

4 Q. And that establishes that he speaks English?

5 A. Yes.

6 Q. At the bottom of the page there are three signature
7 forms, three signature blocks?

8 A. Yes.

9 Q. And on the first line is the person who is signing
10 the form, the signatory of the form, right?

11 A. His printed name, yes.

12 Q. Did you write that name?

13 A. No, that's not my handwriting.

14 Q. Mr. Evans wrote that?

15 A. Correct.

16 Q. And he also wrote the date?

17 A. Yes, that's not my handwriting.

18 Q. He wrote a 6?

19 A. It looks like a 6.

20 Q. He wrote an 11?

21 A. Yes.

22 Q. And he wrote what looks like another 1?

23 A. Correct.

24 Q. And then a 9?

25 A. That's -- from that photocopy it's tough to

1 determine. I be can't read that.

2 Q. The handwriting is really difficult?

3 A. Mine is not much better.

4 Q. Looks like he might have wrote a 5?

5 A. I don't know what that is.

6 Q. But he did not write 2018?

7 A. It doesn't look very clear to be 2018, nor does his
8 last name Evans, but I think that's what he was getting
9 at.

10 Q. All right. When you handed Mr. Evans the consent
11 form, he starred at it?

12 A. Yes.

13 Q. For a long time?

14 A. Yes.

15 Q. And he started chain smoking?

16 A. Yes.

17 Q. He was sweating?

18 A. I mean, the chain smoking and kind of a blank stare
19 at the form was much more noticeable than perspiration.

20 Q. And he seemed nervous?

21 A. He seemed extraordinary nervous at that point.

22 Q. And at any point did you tell him for us to help
23 you, you have to help us?

24 A. I don't recall that statement.

25 Q. Did you talk about how he needed -- you mentioned on

1 direct examination that you told him what that you were
2 going to search for evidence of immigration fraud on his
3 computer?

4 A. We mentioned -- he prior mentioned that he had
5 conversations with Victim 1's mother in the Philippines,
6 and I told him if there was something that could be used
7 against Victim 1 for her subsequent deportation, that that
8 could possibly be found in his phone, that we would like
9 to take a look at that.

10 Q. You gave the impression that you were going to look
11 for evidence of immigration fraud?

12 A. I mentioned Facebook Messenger specifically because
13 that's what he said he communicated with the mom.

14 Q. You gave him the impression that you were there
15 looking for evidence for the investigation of his wife?

16 A. Uh-huh, but we fully said that we were going to take
17 a look at the whole phone.

18 Q. Did you tell him that he had a right to limit the
19 search?

20 A. Limit the search?

21 Q. Uh-huh.

22 A. I don't think I specifically mentioned that. I
23 said, do you give us consent to look at your device, yes
24 or no, and he read the form, starred at it for a long
25 period of time, and then signed it.

1 Q. Never explain that you could say, hey, you can look
2 at Facebook Messenger, but not my email?

3 A. I don't think I went into the specifics of dividing
4 up app by app on the phone. No, I don't think I did that.

5 Q. But because he mentioned Facebook Messenger, you
6 kind of gave the impression that you were going to look at
7 Facebook Messenger?

8 A. I mentioned that part specifically.

9 Q. And the consent form and the warrant form, they were
10 handed close in time together?

11 A. The consent form was the first, the warrant was
12 next, and then Miranda followed the warrant.

13 Q. So when you read Mr. Evans his Miranda Warnings,
14 there were still two law enforcement agents there?

15 A. Myself and Task Force Agent Galbreath was there.

16 Q. You were still in the kitchen?

17 A. Correct.

18 Q. You were still -- one of you was on Mr. Evans' left
19 side?

20 A. I believe I was still in my chair. If we switched
21 chairs, it wasn't to the point that I noticed it.

22 Q. One was on his left side?

23 A. I'm assuming.

24 Q. One on his right?

25 A. I don't recall at that point. That's how we

1 definitely started the interview.

2 Q. The only difference is that you had given him the
3 warrant at that point between the start of the
4 conversation and when you gave him the form?

5 A. We gave him a consent form and then the warrant.

6 Q. Right. When you read the Miranda Warnings, the only
7 changes that you had shown Mr. Evans was the warrant?

8 A. I'm sorry. We gave him the consent form first.

9 Q. In terms of the surroundings, what was going on?

10 A. We had given him a copy of the warrant, and I
11 believe that people were possibly starting to come in the
12 front door. So that's why it could have possibly been
13 perceived as more of a custodial situation because it
14 clearly wasn't before. So that's why I wanted to be safe
15 and -- can I finish or no?

16 Q. When you gave him the warrant, you made a phone
17 call?

18 A. Possibly. Probably to say to let the team come in.

19 Q. You had to call people to come in?

20 A. Right.

21 Q. And between when -- how long did it take them to
22 arrive?

23 A. I mean, they were on the block. So within a minute
24 or two.

25 Q. And then you -- but you -- the order according to

1 you is that you gave him the consent form, yes?

2 A. Yes.

3 Q. And then the warrant?

4 A. Yes.

5 Q. And then read Miranda?

6 A. Yes.

7 Q. And that was all between the period of time of 9:30
8 to 9:50?

9 A. Yeah. 9:50 is when we wrote down on the statement
10 of rights form. So that seems consistent.

11 Q. After you gave -- read Mr. Evans his Miranda
12 Warnings, you continued to ask questions about his
13 marriage again?

14 A. At that point it seemed like it was pretty focused
15 on child pornography.

16 Q. You did ask questions about his travel to the
17 Philippines?

18 A. Earlier in the interview.

19 Q. Are you sure that you didn't ask any questions
20 about -- after Miranda Warnings, you didn't ask any
21 questions about photographs or Mr. Evans' travel to the
22 Philippines?

23 A. I'm not sure if we asked him a follow up question.
24 I mean, that seems like that could have possibly happened,
25 but I don't recall like directly, oh, I gotcha. Here's

1 this question. I don't remember anything specific.

2 Q. Is there anything that you looked at that would
3 refresh your recollection about what kind of questions you
4 asked after Miranda Warnings were given?

5 A. Sure. I'm sure if there is a report of the
6 investigation, I could look at that.

7 Q. All right. I will hand the officer a copy of the
8 investigation report, which I marked for identification as
9 Defense Exhibit 1.

10 A. Thank you.

11 Q. Please review Pages 3 and 4.

12 A. Any paragraph in particular that you want me to look
13 at?

14 Q. On Page 3, the final two paragraphs talk about
15 Miranda. So if you could please review those, and then
16 look at Pages -- on Page 4 at Paragraphs 5 and 6.

17 A. So the paragraph that start with Evans stated that
18 he married a young girl so his sins would go away?

19 Q. Please don't read it. Just review it.

20 A. Okay, but are those the paragraphs? I just want to
21 make sure.

22 Q. Correct.

23 A. So that paragraph and the one below that?

24 Q. Correct -- no. The paragraph above that.

25 A. Okay. Just give me one second.

1 Q. Sure.

2 A. Okay.

3 Q. Do you recall the questions that you asked Mr. Evans
4 after Miranda was given?

5 A. Yes, I reviewed them.

6 Q. You asked him about whether he took photos of his
7 then wife before she was 18?

8 A. I don't know if there was a question there. He made
9 statements.

10 Q. But you -- did you ask him follow up questions about
11 that? Your testimony is that he unprompted he brought
12 that up?

13 A. I'm not sure. I'm just reading the statements that
14 he made, and how we memorialized it.

15 Q. There were questions about why he married his wife?

16 A. It appears that he made statements that his sins
17 would go away if he --

18 Q. There were questions or comments about why he
19 married his wife?

20 A. There was some questions and conversation going on,
21 yes.

22 Q. What time did you leave Mr. Evans' house on
23 June 11th?

24 A. I'm not exactly sure. We left, myself and another
25 agent, and escorted Mr. Evans to the U.S. Marshals for

1 lockup.

2 Q. But you don't remember -- was it afternoon?

3 A. I would say it was in the vicinity of 11, 12. I
4 don't know time that we exactly drove him to the marshals.
5 I left before the rest of the search team.

6 Q. Agent Forys, after you arrested Mr. Evans, he made
7 statements that he thinking about committing suicide?

8 A. When I took him in the vehicle and drove him, there
9 was a fear that he did make some claims to kill himself,
10 yes.

11 MS. FITZHARRIS: Right. No further
12 questions.

13 THE COURT: All right.

14 Ms. Woodward?

15
16 REDIRECT EXAMINATION

17
18 BY MS. WOODWARD:

19
20 Q. Just to clarify Agent Forys, when you testified on
21 direct that when you spoke to the defendant about consent,
22 you were talking about bringing someone to the house to
23 review the devices, is that right?

24 A. Yes.

25 Q. But you ended up seizing the devices taking them off

1 site, is that right?

2 A. Yes.

3 Q. Because that's what the search warrant authorized?

4 A. Yes.

5 Q. So were you relying on the search warrant or on the
6 consent that he gave?

7 A. The search warrant for the electronic video that our
8 forensic agent did the preview on and found the initial
9 load of child pornography.

10 Q. Ms. Fitzharris asked you some questions about the
11 date on Government Exhibit B. I will have you take a look
12 at B and C together, and you see the defendant's printed
13 name on Government Exhibit B?

14 A. Yes.

15 Q. And for the date we see a 6 and 11, correct?

16 A. Yes.

17 Q. And then the number next to it, is it possible
18 that's an 18 or is it hard to say?

19 A. I mean, it is hard to make out, but again, he was
20 pretty nervous.

21 Q. Government Exhibit C, did the defendant date --
22 write a date next to his name?

23 A. It states 6-11-18.

24 Q. That's easier to read?

25 A. It is.

1 Q. Back to Government Exhibit B, underneath the date
2 there's like a scribble below it. Do you know what that
3 is?

4 A. Yes, his signature.

5 Q. All right. So you wrote his -- the portions of this
6 form that the defendant filled out were his printed name,
7 the date and his signature, is that correct?

8 A. Correct.

9 Q. Ms. Fitzharris asked you questions on cross about
10 drunk people. Do you remember those questions?

11 A. I do.

12 Q. And I think she was asking you if drunk people
13 ramble and hard to keep them on a straight train of
14 thought. Do you remember those questions?

15 A. Yes.

16 Q. Have you also encountered people that appeared to be
17 sober that ramble?

18 A. Of course.

19 Q. And hard to keep on a straight train of thought?

20 A. Of course.

21 Q. Is that yes?

22 A. Correct.

23 Q. And before you went to Mr. Evans' home, you had
24 received information from Officer Bailey, correct?

25 A. That's correct.

1 Q. And Officer Bailey also reported that the defendant
2 didn't keep straight train of thought?

3 A. Yeah, he made mention in his memo that the defendant
4 was all over the place.

5 Q. Take a look at Government Exhibit A in the third
6 paragraph. Does Officer Bailey make note of the
7 defendant's demeanor?

8 A. Yes.

9 Q. And that he was jumping from topic to topic?

10 A. Yes. It says the USC began jumping from topic to
11 topic.

12 Q. And USC would be the U.S. citizen. That would be
13 the defendant?

14 A. Yes, that would be Craig Evans.

15 Q. And also that he had a hard time keeping a straight
16 train of thought?

17 A. Yes.

18 Q. Just to review, when the defendant spoke to Officer
19 Bailey on two occasions, May 2nd and May 18th --

20 A. I think it was the 16th.

21 Q. Thank you. He had driven himself presumably to
22 USCIS to Detroit from Sterling Heights?

23 A. Yes, there was no mention of another individual.

24 Q. Okay. Ms. Fitzharris asked you questions about your
25 attire the day that you spoke to the defendant. Do you

1 remember those questions?

2 A. I do.

3 Q. And you testified that you were armed that day?

4 A. I was.

5 Q. And is that normal for you?

6 A. Of course.

7 Q. Did you show the defendant your firearm?

8 A. No, there's no need to do that.

9 Q. Did you tell him that you were armed?

10 A. No. There's no reason to explain that.

11 Q. And same for Task Force Officer Galbreath. Did you
12 observe him tell the defendant that he had a weapon or
13 show him the weapon?

14 A. No.

15 Q. What about handcuffs?

16 A. No.

17 Q. Would they have been covered up by something that
18 you were wearing?

19 A. They would have been on the back of my pants hanging
20 with my jacket or hoodie or whatever I was wearing that
21 day over it.

22 Q. Ms. Fitzharris asked you questions about where you
23 sat when interviewing the defendant. We've talked about
24 how you were at the kitchen table.

25 A. Correct.

1 Q. And she -- and you told her that the defendant was
2 in the middle, and you and Agent Galbreath were on either
3 side?

4 A. Yes.

5 Q. When you got to the defendant's home, did you tell
6 him where to sit, or did he direct you to certain portion
7 of the house?

8 A. No, he was clearing off the table, and he said,
9 please, please, sitdown. Again, he was very excited that
10 we were there.

11 Q. Did you tell him to sit in the middle, where to sit?

12 A. No.

13 Q. When Ms. Fitzharris was asking you questions about
14 the questions of the defendant, you said that the
15 defendant talked at his own pace. What do you mean?

16 A. We just opened the questioning to him, tell us, and
17 he would just go off and kind of talk about from his point
18 of you the facts as he knew them.

19 Q. So for the first portion of the interview before the
20 consent form and the search warrant, were you asking
21 pointed questions or were they more open-ended?

22 A. The first part was completely open-ended, please
23 tell us the story.

24 Q. Were the questions slightly different when talking
25 about child pornography?

1 **A.** Yes.

2 **Q.** When talking about child pornography, Ms. Fitzharris
3 had you look at the paragraph in your report. Do you
4 remember those paragraphs?

5 **A.** Yes.

6 **Q.** Some of those were statements that the defendant
7 made about why he married his wife. Do you remember that
8 part of your report?

9 **A.** Yes.

10 **Q.** Did you specifically ask him why he married his wife
11 or did he offered that up to you?

12 **A.** I think he was trying to explain that this was --

13 **MS. FITZHARRIS:** Objection. Speculation.

14 **MS. WOODWARD:** Ms. Fitzharris suggested that
15 the witness was asking specific questions, and I think --
16 I just want to understand the nature of the interview at
17 this point, and what the defendant -- whether the
18 defendant was offering up information or responding to
19 specific interrogation.

20 **THE COURT:** I'll permit the question.

21

22 **BY MS. WOODWARD:**

23 **Q.** Did you ask him why did you marry your wife or did
24 that topic come up in a different way?

25 **A.** That topic came up organically. He explained to us

1 that this was a way out of looking at child pornography if
2 he could marry someone that looked like a young girl or
3 child.

4 **MS. FITZHARRIS:** Objection. The substances
5 of the statements are not relevant.

6 **MS. WOODWARD:** Again, your Honor, it's just
7 an evidentiary hearing.

8 **THE COURT:** Yes. The Court will overrule.

9
10 **BY MS. WOODWARD:**

11 **Q.** Finish what you were saying.

12 **A.** So he was stating -- explaining that if he married
13 someone that looked young or like a child, that that would
14 alleviate the pressure to look at child pornography.

15 **Q.** So it came up in the context of what you were
16 talking about with child pornography?

17 **A.** Yes.

18 **Q.** And this after you had provided him with Miranda
19 Warnings before you asked a lot of questions about child
20 pornography?

21 **A.** Correct.

22 **MS. WOODWARD:** No further questions, your
23 Honor.

24 **THE COURT:** All right. Thank you. Anything
25 else?

1 **MS. FITZHARRIS:** Nothing further.

2 **THE COURT:** Okay. Thank you, sir. You may
3 step down.

4
5 (Witness excused.)

6
7 **THE COURT:** Ms. Woodward, any other
8 testimony?

9 **MS. WOODWARD:** No, your Honor.

10 **THE COURT:** Ms. Robinson?

11 **MS. ROBINSON:** Yes, your Honor. We would
12 call Mr. Evans to the stand, but may we ask the Court for
13 a five minute break?

14 **THE COURT:** Sure.

15 **MS. ROBINSON:** Thank you.

16
17 (Recess taken.)

18
19 (Proceedings resumed.)

20
21 **THE COURT:** Okay. Ms. Robinson?

22 **MS. ROBINSON:** Defense would call to the
23 stand my client, Craig Evans.

24 **THE COURT:** Okay.

25

1 C R A I G E V A N S

2
3 being first duly sworn by the Court to tell the truth, was
4 examined and testified upon his oath as follows:

5
6 **THE COURT:** We will have you begin by having
7 you state your name, spelling your last name.

8 **THE WITNESS:** Craig David Evans, E-v-a-n-s.

9 **THE COURT:** All right. Thank you, sir. You
10 may proceed.

11
12 D I R E C T E X A M I N A T I O N

13
14 **BY MS. ROBINSON:**

15
16 **Q.** Mr. Evans, I will ask you some questions today about
17 things that happened the night before the police came to
18 your house, as well as the day that they were there, okay?

19 **A.** Yes.

20 **Q.** So if you go back to the evening before the police
21 arrived at your house and executed this search warrant,
22 where were you?

23 **A.** I had just come home after leaving my son at my
24 ex-wife's apartment. He just had a splenectomy, and he
25 was in the hospital for over a week.

1 Q. So your son had just come home from the hospital?

2 A. Yes.

3 Q. You said he had been there for a splenectomy?

4 A. Yes.

5 Q. And so you took him where?

6 A. He as at my ex-wife's apartment.

7 Q. And after you left your ex-wife's apartment, where
8 did you go.

9 A. I went back home after I went to the liquor store.

10 Q. You stopped at the liquor store on your way home?

11 A. Right.

12 Q. Did you make a purchase while you were there?

13 A. Yes.

14 Q. What did you purchase?

15 A. Two pints of Jim Beam.

16 Q. What is Jim Beam?

17 A. A bourbon.

18 Q. Did you go directly home after you left the liquor
19 store?

20 A. Yes.

21 Q. What did you do when you got there?

22 A. At home I just drank the bourbon and played video
23 games the rest of the evening.

24 Q. Was anyone home with you?

25 A. No.

1 Q. You said that you drank the Jim Beam and played
2 video games?

3 A. Yes.

4 Q. How much of the Jim Beam did you drink?

5 A. I drank about half of it, about a pint.

6 Q. You bought two pints when you went to the store?

7 A. Right. I drank about one pint.

8 Q. And your testimony is that you drank one of those
9 pints?

10 A. Correct.

11 Q. Was there anything in particular that caused you to
12 drink that night?

13 A. No, just all the stress from my son being in the
14 hospital for the past week, week and a half, whatever it
15 was.

16 Q. And did you end up finishing or drinking any of the
17 second pint?

18 A. After I woke up, I finished the rest of -- well,
19 almost the rest of it. There was about that much left
20 sitting in the living room.

21 Q. What time did you start drinking that night?

22 A. Seven, 8:00.

23 Q. You said that after you drank the first pint, you
24 went to sleep at some point?

25 A. Between nine and 10:00.

1 Q. And then after you wake up, you said you finished
2 part the of the second pint?

3 A. Correct, around one, 2:00 in the morning.

4 Q. Is it uncommon for to you drink that much?

5 A. No. Sometimes it is and sometimes not. It depends.

6 Q. What do you mean by that?

7 A. Normally I would just drink a pint.

8 Q. Was there anything that caused you to drink more
9 than the normal amount that night?

10 A. No, just alcoholism. There's nothing that I can do.

11 Q. So you consider your an alcoholic, is that fair to
12 say?

13 A. Yes.

14 Q. Have you ever tried stopping or stopping your
15 drinking or getting ahold of your alcohol problems?

16 A. Yes, several times in my life.

17 Q. Okay. Let's talk about the last 18 months, two
18 years. What have you done to try to get ahold of your
19 alcohol problem?

20 A. August of 2017, I went into an actual rehab called
21 Harbor Lights in Clinton Township. It is run by the
22 Salvation Army. I was an inpatient for 10 days.

23 Q. And so that was inpatient treatment. Was that the
24 first time you went for inpatient help?

25 A. Yes, first time for inpatient.

1 Q. Do you feel like that treatment was successful?

2 A. It was at the time because I started going to a new
3 Christian based program instead of a alcohol base called
4 reform unanimous.

5 Q. How long were you participating in reform unanimous?

6 A. All the way up to June of 2017.

7 Q. Now at some point did you start drinking again even
8 though you had done inpatient at Harbor Light and reform
9 unanimous?

10 A. I had a relapse one day in January of 2017.

11 Q. Okay. I'm sorry. I didn't mean to cut you off.

12 A. That's okay.

13 Q. Is relapsing something that is common as part of
14 your alcoholism?

15 A. Yes.

16 Q. And is it fair to say that you were relapsing the
17 night before the police came to your house?

18 A. Yes.

19 Q. We heard testimony from one of the officers about
20 how people behave when they are dried. And so my question
21 for you is, what -- how does your demeanor change when
22 you're drunk?

23 A. I definitely talk a lot.

24 Q. Would you say that you are able to stay focus when
25 you are drinking?

1 A. No, I don't stay focus at all.

2 Q. Are you a person who slurs your speech when drunk?

3 A. Not really.

4 Q. Not really? So is it always going to be -- slurred
5 speech, is that going to be something that is indicative
6 of you being drunk in particular?

7 A. No, you wouldn't recognize it. It depends on where
8 I'm at. I could go -- I know I will feel totally sober,
9 but if I were to drive and get a breathalyzer, I would
10 definitely fail.

11 Q. So going back to that particular night, how did --
12 where did you fall asleep?

13 A. In the living room on the couch.

14 Q. And did you normally sleep in the living room on the
15 couch?

16 A. No, I normally go in the bedroom and sleep in the
17 bedroom.

18 Q. What stopped you from going to the bedroom?

19 A. I fell asleep. I just passed out from drinking.

20 Q. So you passed out after your drinking, and that's
21 what caused you to sleep on the couch?

22 A. Right, and that's when I woke up, and that's why I
23 continued drinking, because I woke up and the bottle was
24 right there on the table.

25 Q. On a scale of one to 10, estimate how drunk you were

1 that night after the second -- after you got into the
2 second bottle. What would you say?

3 A. About a seven.

4 Q. Okay. At some point the next morning you wake up,
5 correct?

6 A. I woke up when the door was being knocked on.

7 Q. And so when the door was being knocked on, that woke
8 you up out of your sleep?

9 A. Yes.

10 Q. What did you do next?

11 A. Answered the door.

12 Q. What specifically did you hear when you woke up?

13 A. My dog starts barking because the door was being
14 knocked on.

15 Q. You heard your dog barking, and you also heard
16 someone knocking being on the door?

17 A. Yes.

18 Q. What did you do?

19 A. Answered the door.

20 Q. And what happened when you got to the door?

21 A. The two agents, Kyle and Jeremy, were at the door.

22 Q. Were you still drunk at that point?

23 A. I imagine so, yes. Definitely over the limit of
24 like a breathalyzer. I would have definitely failed.

25 Q. Could you still feel the affects of the liquor in

1 your system?

2 A. Yes.

3 Q. Even though it was the night before?

4 A. Yes.

5 Q. You said that two agents were at the door. Were you
6 expecting them to come to your house?

7 A. No.

8 Q. What was your reaction when they showed up?

9 A. I surprised that they were there.

10 Q. Why were you surprised?

11 A. I thought they would call me -- or, you know, I was
12 emailing back with them, with Agent Bailey was his name.

13 Q. So you had been in contact with Agent Bailey, and he
14 had your contact information as far as you know?

15 A. Yes.

16 Q. And your expectation was that if they were to follow
17 up with you, they would make arrangements?

18 A. Yes.

19 Q. Before coming to your house?

20 A. Yes.

21 Q. So you were not expecting them that morning?

22 A. No, I was not.

23 Q. It was just the two agents?

24 A. Yes.

25 Q. Do you remember what they were wearing?

1 A. Just like regular pants and like a T-shirt. I
2 believe Jeremy was wearing like a Hawaiian type shirt.

3 Q. They were not dressed in police uniforms?

4 A. No.

5 Q. Could you see if they had weapons on them?

6 A. Yes, I could see that they had guns and handcuffs.
7 They looked like officers like that in that sense.

8 Q. Did they present their badges?

9 A. I don't recall that.

10 Q. But you could see both officers with weapons?

11 A. Correct.

12 Q. And both officers had handcuffs as well?

13 A. Yes.

14 Q. What did they say to you as the reason for being at
15 the door?

16 A. They were following up on a claim that I made.

17 Q. Did they -- did you know what they were talking
18 about?

19 A. Yes, I filed a claim of immigration marriage fraud.

20 Q. What was going through your mind at the time?

21 A. They said that they were there to follow up on that,
22 and so I thought that's what they were there to do, follow
23 up on that. So they asked if they could come in, and I
24 let them in, but then, you know, because I had the dog, he
25 wanted my dog outside because -- I mean, it's a little

1 50 pound dog, but he still wanted him outside. So I put
2 the dog outside before they came in.

3 Q. So one of the agents asked you to remove your dog
4 from the house?

5 A. Yes.

6 Q. Do you remember which agent it was?

7 A. The officer that was on the stand, Jeremy.

8 Q. You said you complied. Did you feel like you had
9 any choice in putting your dog outside?

10 A. I just doing it to be courteous. The dog is super
11 friendly. I wasn't worried about the dog, but some people
12 don't like dogs.

13 Q. You put him outside at the agent's request?

14 A. Correct.

15 Q. When you said they came into the house, where did
16 you all go?

17 A. In the kitchen.

18 Q. And can you describe for the Court how your house is
19 set up? Is it a two story house, a ranch?

20 A. It's a small three bedroom ranch. So when you come
21 through the front door, you pass by the living room where
22 I would sit and where the couch was and the table right
23 there, and then you go through a big door wall, not a
24 sliding door wall, but it was big and open so you can see
25 between the living room and the kitchen pretty easily.

1 Q. So was it a straight path from the front door to the
2 kitchen?

3 A. Yes.

4 Q. And you all went into the kitchen area?

5 A. Yes.

6 Q. Where did you -- where did everybody sit?

7 A. I sat like in the center seat. Jeremy sat here and
8 Kyle sat to my left.

9 Q. You were seated in the middle of that table?

10 A. Yes, because it's up against like -- I call it an
11 island, like cupboards in the middle of the kitchen.

12 Q. I know we covered this a little bit earlier, but
13 what did you think they were there to investigate?

14 A. They said they were following up on the claim of
15 immigration marriage fraud, and that's what they were
16 there to investigate.

17 Q. What types of question did they ask you?

18 A. They started off asking about my relationship, and
19 how we met.

20 Q. And what would you say the tone of the conversation
21 was at the beginning?

22 A. It seemed like they were there to follow up like
23 what they were telling me they were there for.

24 Q. So was Trisha May the focus of the conversation?

25 A. Yes.

1 Q. Did there come a point in time where the tone of the
2 conversation began to change from your perspective?

3 A. When they started giving me the waiver that they
4 wanted me to sign, that when I said I became really
5 reluctant, which I did, because I didn't want to sign it.

6 Q. Let's talk a little bit about what was happening as
7 the tone of the conversation changed. What were you
8 beginning to feel at that time?

9 A. Pressured.

10 Q. Pressured. What was happening that was making you
11 feel pressured?

12 A. Just the line of questioning itself.

13 Q. And would it be fair to say that you were beginning
14 to feel nervous?

15 A. Yes.

16 Q. The officers -- or one of the officers testified
17 earlier that you at some point during these conversations
18 are moving around the house, and that your son began to
19 call. Do you remember that testimony?

20 A. Yes, the only time I moved in the house is they
21 asked about photographs, and so I went to the back room
22 and grabbed the photo album.

23 Q. When you got -- the officer testified that he
24 followed you into the back room to get that photo album?

25 A. He got up and just watch me walk down the hallway.

1 Q. You knew that he was watching you as you went to the
2 bedroom?

3 A. Yes.

4 Q. So it's not like you just went completely free of
5 intrusion by them. They were watching you walk to the
6 back?

7 A. Right.

8 Q. At some point your son began to call your phone?

9 A. Yes.

10 Q. And tell us about that.

11 A. He was calling. He needed a ride to school.

12 Q. How do you know he needed a ride to school?

13 A. We arranged that the night before to take him to
14 school.

15 Q. And he's calling you just once or were there
16 multiple attempts?

17 A. A couple of times.

18 Q. And what did you do in response to those phone
19 calls?

20 A. I just pushed -- I turned it off.

21 Q. Is there a reason why you didn't pick up the phone
22 call?

23 A. They were telling me that I needed to talk to them
24 right now, and, you know, to talk to him in a little bit.

25 Q. So when the agent testified earlier that you told

1 them it was not necessary to pick up that call and that
2 this was more important, were they correct about that?

3 **A.** No. My son is my top priority in this entire world.
4 I wanted to take the call. They were telling me not to at
5 that time, and I told them that he just got out of the
6 hospital, and they said well, if it's an emergency, call
7 him back or something.

8 **Q.** Did you take them up on that? Did you call your son
9 back?

10 **A.** My son showed up at the door within a couple of
11 minutes of the phone call.

12 **Q.** What did you do when your son showed up at the door?
13 How did you know your son was at the door.

14 **A.** He was knocking on the door.

15 **Q.** And did you get up and walk to the door?

16 **A.** Yes, I answered the door.

17 **Q.** Did the agents walk with you?

18 **A.** I believe Kyle walked behind me when I walked to the
19 door. One of them was right behind me.

20 **Q.** And you answered the front door. And what happens
21 next?

22 **A.** My son was there, and I seen that his grandfather
23 already had him in the car. So I asked him if his grandpa
24 could just drive him the rest of the way to school.

25 **Q.** Did you have that conversation directly with your

1 son?

2 A. Yeah, it was 10 seconds.

3 Q. Okay. Did you have any conversation with his
4 grandfather?

5 A. No, he was in the car.

6 Q. What did you tell your son the reason was why you
7 couldn't take him to school?

8 A. I just told him that they were there for the
9 immigration. He already knew what was going on. So I
10 just told him that the agents had showed up -- I just told
11 him that the police showed up to talk to me, and he said
12 okay.

13 Q. Did you feel like you had the freedom at that point
14 to say to the agents, hey listen. I'm going to stop this
15 and take my son to school?

16 A. No, I definitely did not at that point.

17 Q. Why did you not feel free to do that?

18 A. Just their demeanor towards me was we're here now.
19 That was going to take priority over anything else.

20 Q. At some point -- you have a medical condition called
21 diverticulitis?

22 A. Yes.

23 Q. How does that impact you during the course of the
24 day?

25 A. I have a colostomy bag. They had to cut my colon

1 out. So they had to divert where my feces goes. It comes
2 out to the colostomy bag.

3 Q. Do you have to change that bag regularly?

4 A. Yes.

5 Q. Did you have to change the bag that morning?

6 A. Yes, I did.

7 Q. Did you tell the agents that you had to change the
8 bag that morning?

9 A. Yes, I told them that I had to change the bag before
10 they took me -- arrested me or whatever.

11 Q. Did they allow you to you do that?

12 A. Yes.

13 Q. Can you tell us about you going to change the bag?

14 A. When I went in the bathroom, there were other agents
15 in the house, and the agent that sat up here Jeremy. I
16 don't know his last name. So he made it on a first name
17 basis when I spoke with him. So that's all I remember,
18 but he stood at the doorway while I was changing. I
19 pulled out some scissors to do it, and that's when he said
20 to me, not to have him shot him -- or to have him shoot me
21 because I pulled out a sharp object. I said that I was
22 just going to cut the bag open because it has to be 30
23 millimeters of a circle. I have to cut it open it starts
24 out like at 5-millimeter circle.

25 Q. Let me back up. Where did you have to change this

1 colostomy bag?

2 A. In the bathroom.

3 Q. In the bathroom --

4 MS. WOODWARD: If we could clarify when in
5 the sequence of events occurred, I think that would be
6 helpful.

7 MS. ROBINSON: So the agents are at your
8 house, and your son came by. Did you change the colostomy
9 bag before your son was there or after son was there?

10 A. Way after that.

11

12 BY MS. ROBINSON:

13 Q. In terms of when the tone of the conversation
14 changed, did you change the bag before the tone of the
15 conversation changed or after?

16 A. After.

17 Q. And in relationship -- I know we have not gotten
18 there yet -- but I know eventually you find -- you were
19 presented with a search warrant, and you signed a consent
20 form, do you know if you change colostomy bag before or --

21 A. After that.

22 Q. In any event, you went into the bathroom to change
23 the bag, and were you allowed to -- is there a door to
24 your bathroom?

25 A. Yes.

1 Q. Were you allowed to close the door?

2 A. No.

3 Q. Tell us what happened specifically.

4 A. I went in the bathroom, and I pulled out like my kit
5 in a sense. So I have to get a colostomy bag. I have to
6 get disposable bags, the paste to put it on. This is just
7 to cut the bag open. Then the different cleaning
8 solutions, and the things that I have to put on my skin
9 prior to changing.

10 Q. And it was your testimony that Agent Forys was
11 watching you go through the process?

12 A. He stood right at the bathroom door.

13 Q. And he made a statement to you about using the
14 scissors?

15 A. Yes. There was a "C" on my door, and I asked what
16 that was, and he said this room is cleared, and that's
17 when I was pulling everything out.

18 Q. Okay. And what did he say to you about your use of
19 the scissors?

20 A. That's when he said, you know, don't come at me with
21 a sharp object because he would shoot me if I was to come
22 at him with a sharp object. Make sure I wasn't going to
23 try to hurt him, which I acknowledged that I was not going
24 to hurt him. I was just going to change my colostomy bag.

25 Q. At some point the police begin to talk to you about

1 the fact that they have search warrant. Is that fair to
2 say?

3 A. Uh-huh.

4 Q. They show you that they have a search warrant?

5 A. Yes.

6 Q. And they also talk to you about a consent form, is
7 that right?

8 A. Correct.

9 Q. Can you tell us -- or explain to the Court how those
10 forms were presented to you?

11 A. First, they asked me to do the consent form, and
12 like you said, I got really reluctant and became nervous
13 because I didn't want to sign a consent form, and prior to
14 signing the consent form, he gave me the warrant saying it
15 wouldn't matter if I signed it or not because they have a
16 warrant. So I might as well just sign it and cooperate,
17 and it would be better for me if I cooperated.

18 Q. I will show you a copy of the search warrant that
19 was prepared that day. Do you recognize that document?

20 A. I didn't have my reading glasses at the time. So it
21 is about how I seen it at that point. They were
22 explaining to me what it was.

23 Q. You said that you wear reading glasses?

24 A. Yes.

25 Q. When you were presented with that search warrant,

1 did you have your reading glasses with you?

2 A. They were in the kitchen, but I didn't put them on.

3 Q. How many pages is that warrant?

4 A. I don't know. I didn't look that far. Looks like
5 20 some pages.

6 Q. Were you able to read through that warrant in its
7 entirety?

8 A. No.

9 Q. Why not?

10 A. Because they said to sign the consent form, and if I
11 cooperated with them, it wouldn't matter if I read it or
12 not.

13 Q. Did they tell you what the search warrant was for?

14 A. They just told me it was to search my media devices.
15 That's all I knew it was for. They didn't say the other
16 items you mentioned.

17 Q. And so you say they presented you with a consent
18 form, and then the search warrant. How much passes before
19 they showed you the search warrant after showing you the
20 consent form?

21 A. Just five, 10 minutes.

22 Q. So you see the search warrant first, and then you
23 make a decision to sign the consent form?

24 A. Yes.

25 Q. I want to show you what's been previously marked as

1 Government Exhibit B. Do you recognize that document?

2 A. Yes, that's one they gave me first.

3 Q. Explain to the Court what it is.

4 A. He just explained it to me that they were going to
5 pull some data off the electronic devices.

6 Q. Look at the very first paragraph where there's a
7 blank and it has your name. Is that your handwriting?

8 A. No.

9 Q. You did not write that?

10 A. No.

11 Q. Look in the second paragraph where there's
12 additional handwriting. What does that handwriting say?

13 A. It's my address 43348 Donley Drive, Sterling
14 Heights, Michigan.

15 Q. Did you write your address on that line?

16 A. No, I did not.

17 Q. And if you skip down a couple of paragraphs to the
18 line that says, I state that I have standing to consent.
19 Do you see a blank space there that's filled in?

20 A. Yes, I do.

21 Q. Is that something that you wrote on this document?

22 A. No, I did not.

23 Q. And skip down to the very last paragraph, there's a
24 blank space where it says, I understand, and what's
25 written in English. Did you write the word "English" in

1 that form?

2 **A.** No.

3 **Q.** Was this document filled out when they presented it
4 to you already?

5 **A.** I don't remember it being filled out.

6 **Q.** You said that you didn't have your reading glasses
7 on. Did you read this form before you signed it?

8 **A.** No, not actually.

9 **Q.** Did the agent read it to you word for word?

10 **A.** No.

11 **Q.** Either Jeremy Forys or Agent Galbreath?

12 **A.** No.

13 **Q.** Either of the agents try to explain the form to you?

14 **A.** Yeah, I think so.

15 **Q.** Were you able to understand this document and what
16 you were signing?

17 **A.** Yes.

18 **Q.** What was your understanding in terms of what you
19 were giving them permission to look for? What crime were
20 you giving them permission to look for?

21 **A.** That's when they gave me the warrant. So I already
22 knew. By the time I signed it, I already knew because
23 they gave me the warrant what they were looking for.

24 **Q.** So is it your testimony that you signed this consent
25 form in very large part because they presented you with

1 the search warrant?

2 A. Yes.

3 Q. What specifically did they say was the connection
4 between these two documents?

5 A. This was to search the computers and that's what the
6 warrant was for. So I was giving them the right to do
7 that.

8 Q. Did either agent ever tell you that you could refuse
9 to let them search your electronic equipment?

10 A. No, they did never said that I could refuse.

11 Q. Why were you hesitate to sign this form?

12 A. Because I knew what was on the computers.

13 Q. What did they tell you? Did they say anything to
14 you about what signing this form would do for you in
15 relationship to the case?

16 A. They said it would help me if I helped them in.
17 That's all they said. If I cooperated with them -- it
18 would be better for me to cooperate than to be resistant.

19 Q. I want to talk a little bit about what was going
20 through your head as all of this was taking place.

21 Agent Forys wrote in his report that they found
22 it extremely hard to keep you on a straight train of
23 thought during the interview. Would you agree with that
24 statement?

25 A. Yes.

1 Q. Why?

2 A. Because I was feeling the effects of the alcohol
3 from the night before or the late morning before.

4 Q. So in part, the alcohol was causing you to be
5 scattered in your thought process?

6 A. Correct.

7 Q. How were you feeling aside from the alcohol? Were
8 you comfortable at that point?

9 A. Not with them there, no.

10 Q. Do you have problems with anxiety?

11 A. Yes.

12 Q. Can you talk about that?

13 A. It's hard to, but --

14 Q. Have you ever been treated by a doctor for anxiety?

15 A. Yes.

16 Q. When you are feeling anxious, how does that affect
17 the way you think?

18 A. Like, I am doing right now. I don't want to talk
19 about it.

20 Q. Does it affect you physically being anxious?

21 A. Just makes me nervous.

22 Q. And when you say that you get nervous, how do you
23 know you're feeling nervous, and I'm sorry. I know these
24 are very basic questions, but we just want to understand
25 how you're feeling and what's going through your head so

1 the Court can understand.

2 A. I just start feeling real fidgety.

3 Q. Would you say your heart starts to beat fast?

4 A. Yes. My blood pressure goes up.

5 Q. Does it affect your breathing at all?

6 A. A little bit.

7 Q. And so are you feeling anxious during this
8 discussion with the officers?

9 A. Yes.

10 Q. And in addition to feeling the affects of the
11 alcohol?

12 A. Yes.

13 Q. When you figured out that focus of the conversation
14 was shifting to what was on the computer, how did that
15 make you feel toward the officers?

16 A. I felt anxious about -- I realized then that they
17 were not there to help me. That's when I realized they
18 were investigating me and not following up on the
19 complaint.

20 Q. Did that make you feel defeat at all?

21 A. Yes.

22 Q. And you already said that you began to feel nervous.
23 So you would agree with the officer's statement in his
24 report that you began to exhibit nervous behavior?

25 A. Yes.

1 **Q.** The agent wrote in his report that at some point you
2 told them that you hurt or kill yourself. Do you recall
3 making that statement?

4 **A.** Not really. I have made statements like that in the
5 past.

6 **Q.** You made statements like that in the past?

7 **A.** Yes.

8 **Q.** Have you had thoughts of suicide in your past?

9 **A.** Yes.

10 **Q.** What is going through your mind when you are feeling
11 suicidal?

12 **MS. WOODWARD:** Objection to the relevance,
13 your Honor.

14 **MS. ROBINSON:** Your Honor, I believe it is
15 relevant. If the officers objectively are receiving
16 evidence from my client indicating that he suicidal, I
17 think it has every bit of bearing on his mental state at
18 the time of this interview, and it is relevant to this
19 Court's analysis.

20 **THE COURT:** I'll permit the question.

21 **MS. WOODWARD:** If I could just make a record,
22 the statement about being suicidal I believe is
23 post-duress, and I think the defendant just testified that
24 he didn't remember making the statement.

25 **THE COURT:** Thank you.

1 **MS. ROBINSON:** You had thoughts of suicide in
2 the past?

3 **A.** Yes.
4

5 **BY MS. ROBINSON:**

6 **Q.** In fact, you had been admitted to the hospital just
7 a month earlier based on a report that you were going to
8 put a bullet in your own head, and you were taken in
9 voluntarily to the hospital?

10 **MS. WOODWARD:** Objection to the leading.

11 **THE COURT:** Try to avoid leading questions.

12 **MS. ROBINSON:** I'm sorry. I'll rephrase.

13 Have you been hospitalized in the past for
14 suicidal issues?

15 **A.** Yes.
16

17 **BY MS. ROBINSON:**

18 **Q.** How recently before the police were at your house?

19 **A.** I believe May 21st.

20 **Q.** When feeling suicidal, can you explain to the Court
21 what kind of thoughts are going through your head?

22 **A.** Hopeless and lost, and I get like panic attacks,
23 feel like I'm suffocating.

24 **Q.** So you feel hopeless, you feel lost, and you feel
25 like you're suffocating. Were you feeling any of those

1 things when the police came to your house?

2 A. After they issued the warrant and stuff, yes.

3 Q. At some point during the conversation after the tone
4 shifted -- let me rephrase it.

5 When during their interview did you start to
6 feel suicidal?

7 A. I can't recall exactly.

8 Q. I think you said earlier -- and forgive me for
9 talking over you -- I think you said earlier, it was after
10 they showed you the search warrant and you began to
11 understand --

12 A. I don't remember exactly what time it was.

13 Q. Do you think it was -- did your frame of mind begin
14 to shift in that direction after you signed the consent
15 form?

16 A. Yes.

17 Q. And so eventually you come to find also a Miranda
18 waiver. Do you remember that?

19 A. Yes.

20 Q. I want to show you what has previously been marked
21 as Government Exhibit C. Do you recognize that form?

22 A. Yes, I do.

23 Q. What is it, Mr. Evans?

24 A. I'm sorry?

25 Q. What is the document?

1 A. Statement of rights.

2 Q. Do you notice that there are a series of blank
3 spaces before each sentence on that page?

4 A. Yes, they had me initial them as we read through
5 them.

6 Q. And when you look towards the bottom of the
7 document, you see where it says "print name"?

8 A. Yes.

9 Q. Is that your name?

10 A. Yes.

11 Q. Did you write that?

12 A. Yes.

13 Q. It doesn't appear to say Craig Evans. What was
14 going on with the last name?

15 A. I was being reluctant to sign it.

16 Q. Why?

17 A. Because I actually didn't want to waive my rights.
18 I felt pressured to do so.

19 Q. What was making you feel that pressure?

20 A. Because they already had me do the other form for
21 Exhibit B, and then the warrant itself.

22 Q. Okay. So you don't actually complete your last name
23 on the printed part of this waiver?

24 A. Correct.

25 Q. And then what about below that where there's a

1 signature line. Is that your signature?

2 A. Yes, sort of.

3 Q. Is that the normal way your signature looks?

4 A. No.

5 Q. Why do you think maybe there's a difference how it
6 looks normally?

7 A. Because I was reluctant to sign it.

8 Q. At the time that you signed this document, were you
9 still feeling anxious?

10 A. Yes.

11 Q. Suicidal?

12 A. Yes.

13 Q. And still feeling the affects of the alcohol?

14 A. Yes.

15 Q. How long had the agents been at the house when you
16 signed the form?

17 A. About two and a half hours.

18 Q. And from what you recall you when signed this form,
19 was it at beginning of the interview, middle or towards
20 the end?

21 A. Toward the end. This probably right before I
22 changed the colostomy bag.

23 Q. Now they asked you a series of questions both before
24 you signed this form and after signed it, is that correct?

25 A. Yes.

1 Q. Did they ask you questions about your sexual
2 relationship with Trisha in the early part of the
3 interview?

4 A. Yes.

5 Q. Before you signed this form?

6 A. Uh-huh.

7 Q. Did they also ask you about your sexual relationship
8 with Trisha after you signed this form, and after they
9 presented the search warrant?

10 A. It seemed to be the same type of questions before
11 and after.

12 Q. Did they ask you questions about your interactions
13 was Trisha May in the Philippines during the first part of
14 the interview?

15 A. Yes.

16 Q. And did they ask you questions about your
17 interactions with Trisha May in the Philippines after you
18 were presented with a search warrant and signed this form?

19 A. Yes, they were asking if I had taken photos of her
20 and stuff.

21 Q. This was before and after?

22 A. And I told them that I had never taken any nude
23 photography of her before she was 18.

24 Q. Did they ask you questions about your general
25 interest in underage girls during the first part of the

1 interview?

2 A. Not entirely, no.

3 Q. Did they ask you questions that were in that
4 general -- on that general topic?

5 A. Yes.

6 Q. Did they also ask those kind of questions after you
7 signed this form?

8 A. Yes.

9 Q. And did they talk to you about the making of sexual
10 videos before you signed this form during first part of
11 the interview, whether legal or not?

12 A. Yes.

13 Q. Did they also question you about sexual videos and
14 pornography after you signed this form?

15 A. Yes.

16 Q. Did the officers who were questioning you, did those
17 people change? Were at any point questioned by any
18 officers besides Agent Forys and agent Galbreath?

19 A. There was some lady that asked me a couple
20 questions. I don't know who she was or anything about
21 her.

22 Q. Did she ask you questions on the same topics or --

23 A. On those topics, yes.

24 Q. Do you remember -- you don't remember her name?

25 A. No.

1 Q. All right. Do you remember what she looked like?

2 A. Not at all.

3 Q. Okay.

4 A. I think she was just there to gather devices or
5 something.

6 Q. Had you been sitting in the same room at the same
7 table for the entirety of this interaction with the two
8 officers?

9 A. Except for going outside, yes.

10 Q. Was there any real break in time between the two
11 interviews, and the two interviews being before you got
12 the search warrant, before you signed the consent form,
13 before you signed the Miranda waiver and after?

14 A. I'm sorry?

15 Q. Was there any break in time or was this one
16 continuous --

17 A. It seemed continuous to me.

18 MS. ROBINSON: Your Honor, if I may have a
19 moment?

20 THE COURT: Sure.

21 MS. ROBINSON: I have nothing further.

22 THE COURT: Thank you, Ms. Robinson.

23 Ms. Woodward?

24

25 CROSS EXAMINATION

1 BY MS. WOODWARD:

2
3 Q. Good morning, Mr. Evans.

4 A. Good morning.

5 Q. Give me just a second. All right. Your attorney,
6 Ms. Robinson, asked you some questions about the night
7 before the officers came to your house. Do you remember
8 those questions?

9 A. Some of them, yes.

10 Q. And that's just something we typically say, but
11 you're right. I'm sure you don't remember every single
12 question.

13 I believe it was your testimony that the evening
14 before the officers came, that you had gone to the liquor
15 store and bought two pints of Jim Beam?

16 A. Yes.

17 Q. And you drank one pint and played video games?

18 A. Yes.

19 Q. And this was on June 10th of this year?

20 A. Yes.

21 Q. You also looked at child pornography that night?

22 MS. ROBINSON: Objection, your Honor. Number
23 one, I think it's irrelevant to the questions before the
24 Court. The focus of this is voluntariness of his
25 statements the next day, and beyond that it is also

1 incriminating. I don't think it should be permitted. It
2 is irrelevant before the Court right now.

3 **MS. WOODWARD:** Your Honor, just so you know,
4 I have a good faith basis for asking it. That's what the
5 defendant told the officers during his interview, and he
6 has put that evening into question by testifying about the
7 other things that he did that night.

8 By testifying today his credibility is at issue,
9 and he also testified that when the demeanor -- or when
10 the interview shifted and he got nervous talking about the
11 consent form, I believe what he said was because he knew
12 what was on the computers. Ms. Robinson didn't follow up,
13 but what is going on here is, of course, he knew there was
14 child pornography on the computers, and that he had looked
15 at it the night before.

16 So I think it is proper to continue asking him
17 questions about the night before since he's testified
18 already about the other things that he did that meaning.

19 **MS. ROBINSON:** Your Honor, there is no value
20 whatsoever to the question of his state of mind when those
21 officers showed up that morning from a voluntariness
22 standpoint, and because it is incriminating and because
23 there are pending charges that he's been accused of
24 possession of child pornography, it is incriminating, and
25 I don't think it is relevant to this line of questioning.

1 **THE COURT:** He has admitted that he knew what
2 was on the --

3 **MS. WOODWARD:** I can rephrase, if you would
4 like, to avoid ask directly to make an incriminating
5 statement under oath.

6 I could say to the defendant, when you spoke with
7 Jeremy and Kyle, you told them the last time you looked at
8 child pornography was the night before, is that right?

9 **A.** I made copies of the files the night before.

10 **MS. ROBINSON:** Objection, your Honor.

11 **THE COURT:** I didn't hear the answer
12 actually.

13 **MS. ROBINSON:** I'm sorry?

14 **THE COURT:** I didn't hear the answer.

15 **MS. ROBINSON:** I guess my objection is first
16 of all, it's not responsive to the question that she has
17 asked. Ultimately, your Honor, the substance of what he
18 said is not pertinent.

19 **MS. WOODWARD:** But his credibility is what
20 we're here to talk about. He's testified that several of
21 the things that Agent Forys said were incorrect.

22

23 **BY MS. WOODWARD:**

24 **Q.** And so I would just ask him, isn't it true that you
25 told Jeremy and Kyle when they interviewed you, that you

1 had looked at child pornography the night before they
2 arrived?

3 **THE COURT:** I'll permit that question.

4 **A.** Yes.

5
6 **BY MS. WOODWARD:**

7 **Q.** You also mentioned a moment ago about having a
8 drinking problem, is that right?

9 **A.** Yes.

10 **Q.** Something that you have struggled with off and on?

11 **A.** Yes.

12 **Q.** You've had periods of sobriety and relapses,
13 correct?

14 **A.** Yes.

15 **Q.** During times when you are drinking, is it fair to
16 say that your tolerance for alcohol is higher then at
17 times when you are sober?

18 **A.** I don't remember how many times being sober. So I
19 don't know.

20 **Q.** You're sober right now, correct?

21 **A.** Yes.

22 **Q.** So as a human, if you were to have drinks today,
23 those would have a stronger affect on you than perhaps
24 they would at times when you were drinking regularly?

25 **A.** I imagine so, yes.

1 Q. And so at the time when the officers came to your
2 house, you had been drinking for awhile or was this your
3 first relapse?

4 A. My first relapse in a little while, for quite a
5 while since January.

6 Q. But you were able -- you're able today to remember
7 your conversations with officers in some detail, is that
8 right?

9 A. Yes.

10 Q. And you also said that you had made arrangements the
11 night before with your ex-wife to take your son to school
12 the next day, correct?

13 A. Correct.

14 Q. And when he contacted you that morning, he was
15 looking for a ride to school?

16 A. Yes.

17 Q. And the agents told you not to drive him, is that
18 your testimony?

19 A. They said that I needed to stay talking with them.
20 About driving him didn't come up until he came to the
21 door, and I asked him to get a ride with his grandfather.

22 Q. But had the agents not arrived that morning, and you
23 weren't expecting them, you would have driven your son to
24 school, is that correct? Is that the plan that was made
25 the night before?

1 A. He would have ended up getting a ride from his
2 grandfather because I would not have be able to drive.

3 Q. All right. Maybe I misunderstood your testimony. I
4 thought you had said the night before with your ex-wife,
5 you arranged to take your son to school the next day.

6 A. I was going to, but I was not capable.

7 Q. That's your testimony, that had the officers not
8 been there, you would have declined to drive your son
9 because you were too inebriated?

10 A. Yes, at that point.

11 Q. You made statements on direct that you were
12 surprised to see Jeremy and Kyle that morning because you
13 thought they would called first, is that right?

14 A. Yes.

15 Q. And when they ultimately introduced themselves to
16 you, you knew them by their first names, Jeremy and Kyle?

17 A. That's how they introduced themselves to me.

18 Q. You knew them as Jeremy and Kyle?

19 A. First time I met them was at the door.

20 Q. Of course. So I will call them Jeremy and Kyle
21 since those are the names that you used with them.

22 So you weren't entirely surprised that they were
23 there. You were surprised that they didn't call first,
24 correct?

25 A. Correct. I was surprised that I didn't get a call

1 first.

2 Q. Because you had gone to talk to Officer Bailey
3 twice, correct?

4 A. Yes.

5 Q. So on May 2nd, you drove yourself to the U.S.
6 Customs Immigration Center on Jefferson in Detroit?

7 A. Yes.

8 Q. And you walked in and asked to speak to someone?

9 A. Correct.

10 Q. And you talked to Officer Bailey?

11 A. Yes.

12 Q. And you told him that you wanted -- I will call
13 V-1 -- deported, right?

14 A. I wanted an investigation of immigration marriage
15 fraud.

16 Q. You wanted an investigation into marriage fraud?

17 A. Yes.

18 Q. To your own marriage?

19 A. Yes.

20 Q. And you had told Officer Bailey that you weren't a
21 predator, right?

22 MS. ROBINSON: Your Honor, I'm going to
23 object to the relevancy of this line of questioning. It
24 is similar to what was talked about earlier, the substance
25 what he said is not pertinent beyond the fact that he made

1 a report -- made two reports. So I'm not sure of the
2 purposes of going into the details of this statement.

3 **MS. WOODWARD:** I'm not going to go line by
4 line, but the defendant's credibility is at issue, and I'm
5 simply asking him about his prior contacts with law
6 enforcement and his statements.

7 **MS. ROBINSON:** But, your Honor, that doesn't
8 answer the question of the relevance of this legal
9 question before the Court.

10 **THE COURT:** I will sustain the objection.

11 **MS. WOODWARD:** Then you went back to the same
12 location on May 16, correct?

13 **A.** Correct.

14
15 **BY MS. WOODWARD:**

16 **Q.** You were upset because you had a court date on your
17 domestic violence charge and V-1 was there, correct?

18 **A.** Not that she was there. That was not why I was
19 upset -- I'm sorry?

20 **Q.** I'll rephrase. When you went back the second time,
21 you had a court date between the two dates, is that right?

22 **A.** I had a court date on May 16th.

23 **Q.** So you had a court date on May 16th for domestic
24 violence?

25 **A.** Yes.

1 Q. And then you went from there to USCIS?

2 A. Yes.

3 Q. To further make a complaint about marriage fraud,
4 correct?

5 A. Who you're calling V-1, changed her complaint from
6 domestic violence to that she was forced here by her
7 mother to come to the United States.

8 Q. So you were giving them additional information, is
9 that fair?

10 A. Yes.

11 Q. Did you tell Officer Bailey at some point if she was
12 not deported, you could face time in prison?

13 A. No, I didn't say face time in prison.

14 Q. What did you say?

15 A. My attorney didn't even tell me that I was going to
16 face jail time.

17 Q. What did you say?

18 MS. ROBINSON: Your Honor, objection to the
19 relevance. It's been established that he went there not
20 once but twice, and made a report, and it was a follow up
21 on the initial investigation. I think that's the relevant
22 fact for this line of questioning.

23 MS. WOODWARD: Your Honor, this goes to bias.
24 The defendant essentially was trying to have his ex-wife
25 deported, and when they showed up to investigate, he was

1 thrilled to see them. Now he is testifying to something
2 different, and I think it's relevant appear probative as
3 to what bias he might have.

4 **THE COURT:** I'll overrule the objection.

5 **MS. WOODWARD:** So at some point did you tell
6 Officer Bailey that you would get in trouble if she was
7 not deported?

8 **A.** Yeah, I said that I didn't want to have a domestic
9 violence go against my record.

10
11 **BY MS. WOODWARD:**

12 **Q.** If she were deported, then there would not be a case
13 against you?

14 **A.** Correct. That's what my attorney in the civil suit
15 said.

16 **Q.** Okay. So when the agents came to your house, Jeremy
17 and Kyle, and knocked on your door, you answered the door?

18 **A.** Yes.

19 **Q.** It was about 7:20 in the morning?

20 **A.** I think so.

21 **Q.** And they identified themselves for you?

22 **A.** Correct.

23 **Q.** And they told you that they were there to follow up
24 on your request to have your wife deported?

25 **A.** They were following up on the immigration marriage

1 fraud.

2 Q. Immigration marriage fraud, and you were excited?

3 A. I was surprised to see them.

4 Q. You were surprised, but you were happy to see them?

5 A. I was surprised.

6 Q. Were you happy to see them?

7 A. Not really. I was kind of out of it. So there was
8 no happiness or sadness or anything like that.

9 Q. You didn't say, you're finally here? That was not
10 your response?

11 A. No.

12 Q. Even though you went to USCIS to press this
13 complaint, right?

14 A. I went there twice, correct.

15 Q. And you invited them into your home?

16 A. They asked if they could come in, and I said yes.

17 Q. They asked if they could come in, and you said yes?

18 A. Yes.

19 Q. And you brought them to your kitchen table, correct?

20 A. Correct.

21 Q. They didn't tell you where to sit, right?

22 A. No.

23 Q. It's your home, right?

24 A. Yes.

25 Q. And when people come to your house, you direct them

1 where you want them to sit, right?

2 A. No, they just grabbed a couple of chairs, and I
3 grabbed a chair. I mean, the specifics of that is
4 irrelevant.

5 Q. They grabbed some chairs, you grabbed a chair, and
6 you all start talking, right?

7 A. Right.

8 Q. All right. And they asked you -- or Jeremy asked
9 you to start at the beginning, and tell them about your
10 relationship with V-1, right?

11 A. Uh-huh.

12 Q. Is that yes?

13 A. Yes.

14 Q. And they listened to you, right?

15 A. Yes.

16 Q. Kind of a long story?

17 A. Yes.

18 Q. Little bit convoluted, and you gave them some
19 details, right?

20 A. Yes.

21 Q. Did it take some time to tell them the story?

22 A. Yes.

23 Q. Did they seem interested in listening to what they
24 had to say?

25 A. Seemed to.

1 Q. Did they ask you questions or did you -- who did
2 more of the talking, you or them?

3 A. I probably did more of the talking.

4 Q. So they might have asked a question, and you
5 probably would go on for a while to answer, right?

6 A. Yes.

7 Q. And offered to show them things at points where it
8 fitted into what you were telling them?

9 A. Just the photo album. That was the only time that I
10 went and got anything.

11 Q. You went and got the photo album from the wedding?

12 A. Yeah, the wedding album.

13 Q. And that was in the bedroom?

14 A. Yes.

15 Q. What about the receipt from the hotel?

16 A. That was in the photo album. I put everything in
17 the photo album.

18 Q. You told them about the hotel and receipt, correct?

19 A. Yes.

20 Q. And then you told them about wedding, and then you
21 showed them the documents about what you were telling
22 them, correct?

23 A. Correct. I showed them the wedding photos and all
24 the other photos.

25 Q. So that sounds pretty similar to what we heard from

1 Jeremy, but you say that when your son called, they had
2 told you not to talk to him?

3 **A.** They said that it was more important to talk to them
4 than -- when he came to the door, that was almost in the
5 same couple of minutes or two.

6 **Q.** Let me back up. Your son contacted you first on the
7 phone, is that right?

8 **A.** Right.

9 **Q.** Before he came to the door, he contacted you on the
10 phone?

11 **A.** Yes.

12 **Q.** Called or texted?

13 **A.** I thought he called.

14 **Q.** Okay. And did you answer the call?

15 **A.** I said no.

16 **Q.** Who said no?

17 **A.** I said no, and I turned it on vibrate.

18 **Q.** Did Jeremy or Kyle tell to you say no or was that
19 your decision?

20 **A.** That was my decision when he first called.

21 **Q.** He first called, and you said I'm not going to take
22 this call, and that was your decision?

23 **A.** Yes.

24 **Q.** I heard you say something about Jeremy or Kyle
25 telling you that speaking to them was more important.

1 What are you talking about? When did that happen?

2 A. After the second call.

3 Q. Okay. So your son called again?

4 A. Yes.

5 Q. Did you answer that phone call?

6 A. No. I don't remember how many times he called.

7 Q. He tried to contact you multiple times?

8 A. Yes.

9 Q. And you decided not to take the calls?

10 A. Correct.

11 Q. And at some point Jeremy or Kyle talked about that
12 with you, correct?

13 A. I'm not exactly sure.

14 Q. Jeremy testified that he said talk to your son. Go
15 ahead. I heard you say something different. I'm trying
16 to understand what --

17 A. I don't recall him saying go ahead and talk to your
18 son.

19 Q. Did he affirmatively say not to talk to your son?

20 A. I don't recall that either.

21 Q. You don't remember that either?

22 A. Correct.

23 Q. Okay. At some point your son is now at the house?

24 A. Correct.

25 Q. And he's there -- does he need to get things for

1 school? Does he need a ride?

2 A. He was suppose to get a ride from me. He was
3 wondering if I was going to give him a ride, and I asked
4 him to ask his grandfather who was still sitting in the
5 car if he could just get a ride from his grandfather to
6 school.

7 Q. And is it at that point that either Jeremy or Kyle
8 said something to you about talking to them might be more
9 important?

10 A. Yeah, I think it was around that time.

11 Q. And what did they say?

12 A. They just said that this matter was, you know, more
13 important. I don't know if anyone said anything about
14 more importance or less importance.

15 Q. So it's your testimony that they didn't say, hey,
16 we'll leave. You should talk to your son. We'll come
17 back?

18 A. They never said they would leave and come back.

19 Q. You never asked them to stay?

20 A. I don't remember asking them to stay either, but I
21 know they didn't ask -- they didn't offer up to leave to
22 take my son somewhere or nothing like that. They never
23 offered that up.

24 Q. So you don't remember being adamant that they stay
25 in your home and continued to talk to them?

1 A. I wasn't adamant, no.

2 Q. Okay. So during this first portion of the
3 interview, I think Ms. Robinson was talking about the
4 first portion and the second portion. So the first
5 portion being before you get to the electronic consent
6 form. So during that first portion, you smoked cigarettes
7 sometimes, right?

8 A. They asked me not to. So I stepped outside. They
9 didn't want me to.

10 Q. You stepped outside to smoke cigarettes?

11 A. Right.

12 Q. But there were times you smoked cigarettes at the
13 table?

14 A. Not the first half.

15 Q. Did you stand at the door and talked to Jeremy and
16 Kyle while smoking cigarettes?

17 A. At the door wall. It's a big sliding glass door.
18 So I may have.

19 Q. You may have?

20 A. Yes.

21 Q. Okay. And then at the point that the agents started
22 talking about your electronic devices, that's when things
23 changed for you a little bit, correct?

24 A. Yes.

25 Q. You got nervous?

1 A. Uh-huh. Yes.

2 Q. Anxious?

3 A. Yes.

4 Q. And at least one of the reasons you were nervous is
5 because you knew there was child pornography on the
6 computers, correct?

7 A. Yes.

8 Q. But you were conflicted. You still wanted to seem
9 like you were cooperating with the agents, right?

10 A. Yes.

11 Q. Because you didn't want to get in trouble, right?

12 A. Yes.

13 Q. And you're thinking if they find child pornography,
14 you might get in trouble, right?

15 A. Yes.

16 Q. And you probably know that you would get in trouble?

17 A. Yes.

18 Q. And you want them to focus on the immigration fraud.
19 This is your goal to take action that you wanted for your
20 wife, right?

21 A. Yes.

22 Q. And you felt they might be more likely to do that if
23 you were cooperative, is that fair?

24 A. They told me that I should cooperate with them.

25 Q. But as a person you thought, if you can seem like

1 you're -- if you can be like the part of the interview
2 when things were friendly, then maybe you get in trouble?
3 Maybe they an still focus on your wife, is that right?

4 **A.** Yes.

5 **Q.** Okay. So you stare at the form, and you don't know
6 what to do, is that fair?

7 **A.** I knew I didn't want to sign it.

8 **Q.** You knew you didn't want to sign it, but you wanted
9 to seem cooperative. Are you going back and forth
10 deciding what you should do?

11 **A.** Yes, going back and forth.

12 **Q.** You know if you don't sign it, they will think you
13 have something on your computers that you don't want them
14 to see, right?

15 **A.** Yes.

16 **Q.** If you do sign it, then they find the stuff that you
17 don't want them to see, right?

18 **A.** Yes.

19 **Q.** So you go back and forth and you ultimately sign it,
20 right?

21 **A.** I signed it when they were giving me the warrant.

22 **Q.** So it is your testimony that while you are looking
23 at Government Exhibit B, the consent form, that they then
24 show you the search warrant, is that correct?

25 **A.** Correct.

1 Q. And I think Ms. Robinson showed you the search
2 warrant, but what they give you is just the two pages,
3 correct? It doesn't have a whole affidavit. It's not the
4 30-40 page document?

5 A. I thought it was a couple of pages.

6 Q. Just the search warrant like cover sheet, right?

7 A. Right.

8 Q. And then there as this conversation is turning, they
9 present you with the Miranda Warnings?

10 A. Yes.

11 Q. Government Exhibit C?

12 A. Yes.

13 Q. And on Government Exhibit C we see the initial C.E.
14 seven times, right?

15 A. Yes.

16 Q. Next to each paragraph in the first half?

17 A. Yes.

18 Q. And you wrote that?

19 A. Yes.

20 Q. And Jeremy and Kyle were still the ones that talked
21 to you about this?

22 A. Yes.

23 Q. Still at the kitchen table?

24 A. Uh-huh.

25 Q. Yes?

1 A. Yes.

2 Q. And they put this in front of you?

3 A. Yes.

4 Q. And Jeremy read it to you, correct?

5 A. Yes, the lines. He had me initial it by them.

6 Q. So as he read it to you, you initialed it?

7 A. Yes.

8 Q. So he explained to you that it was his duty it to
9 advise you of your rights, correct?

10 A. Yes.

11 Q. Then he said you have the right to remain silent,
12 correct?

13 A. Yes.

14 Q. And you initialed it, right?

15 A. Yes.

16 Q. And anything that you say can be used against you in
17 a court of law or other proceeding, and you initialed it,
18 correct?

19 A. Yes.

20 Q. And he read this out loud. He just didn't expect
21 you to read it, correct?

22 A. I believe so, yes.

23 Q. You had your reading glasses in the kitchen, but you
24 didn't have them on?

25 A. Correct.

1 Q. And then he read to you, you have the right to
2 consult an attorney before making any statement or
3 answering questions, and you initialed it?

4 A. Yes.

5 Q. Same for you have the right to have an attorney
6 present with you during questioning, and you initialed it?

7 A. Yes.

8 Q. And that if you couldn't afford an attorney, one
9 would be appointed for you, and you initialed it?

10 A. Yes.

11 Q. And that if you decide to answer questions, that you
12 could stop the questioning at any time, correct?

13 A. Yes.

14 Q. And you understood these words. You heard things
15 like that perhaps on TV before?

16 A. Yes.

17 Q. You knew what he was saying?

18 A. Yes.

19 Q. You might have been conflicted about whether or not
20 to sign, but you knew what he was saying, right?

21 A. Yes.

22 Q. Okay. And then the second half says I have read or
23 someone has read to me this statement, and I understand
24 what my rights are. At this time I am willing to answer
25 questions about without a lawyer present, and you wrote

1 your name, signed your name and dated it, right?

2 A. Reluctantly, yes.

3 Q. Reluctantly. And sitting here today, you might
4 wished you hadn't?

5 A. Yeah.

6 Q. Yeah. But at the time you signed it and you dated
7 it, and you didn't tell Jeremy or Kyle that you didn't
8 want to do it, did you?

9 A. They knew that I was reluctant to do it.

10 Q. You didn't state to them, I want to have an
11 attorney, did you?

12 A. No, I did not.

13 Q. You didn't say to them, I want to exercise my right
14 to remain silent?

15 A. No.

16 Q. And you didn't say, I want you to stop questioning
17 me, did you?

18 A. No.

19 Q. Okay. You're saying that they were suppose to read
20 your mind and know that you were reluctant and conflicted
21 about this?

22 A. No, they can't read my mind.

23 Q. Okay. Then after you signed this form, they asked
24 you more about child pornography -- or they asked you
25 about child pornography at some point?

1 A. No. By the time this form came out, they already
2 said they found some on the computers whoever they brought
3 in.

4 Q. So someone had already found child pornography by
5 the time you signed this form?

6 A. Yes.

7 Q. After you signed this form, they continued or asked
8 you questions about child pornography?

9 A. Yes.

10 Q. And you made some statements about that, right? You
11 continued to talk with them after you signed this form,
12 correct?

13 A. Yes.

14 Q. At some point you were arrested and taken to this
15 courthouse, is that right?

16 A. Yes.

17 Q. And prior to coming down here when you were still at
18 your home, you needed to empty your colostomy bag?

19 A. Change it.

20 Q. Was it before -- do you remember was this right
21 before you left to come downtown that you changed the bag
22 or when was it?

23 A. Pretty much right before we left.

24 Q. Right before you left?

25 A. Yes, approximately that time.

1 Q. At that time there's a search team in your house, is
2 that right?

3 A. Yes.

4 Q. So the first part of the interview you got Kyle and
5 Jeremy and you, and your son comes for a minute, right?

6 A. Yes.

7 Q. The second part of the interview after you went --
8 around the time you're signing this form, there's people
9 searching your house, is that right?

10 A. Yes.

11 Q. And you even ask Jeremy about the "C" on door to the
12 bathroom, is that right?

13 A. Yes.

14 Q. And he tells you that means the room has been
15 cleared?

16 A. Yes.

17 Q. Because at this time there is a lot more people in
18 the house, right?

19 A. Right.

20 Q. This was right before you left to come downtown. It
21 was certainly after you had signed this form, correct?

22 A. Yes.

23 Q. And it may have been after you were under arrest?

24 A. I guess so.

25 Q. And when you testified on direct, you knew that

1 Jeremy and Kyle had a firearm, is that right?

2 A. Yes.

3 Q. Because they showed them to you?

4 A. They were wearing them.

5 Q. They were wearing them?

6 A. Yes.

7 Q. But they didn't lift their shirts up to show you?

8 A. No.

9 Q. Is that right?

10 A. Correct.

11 Q. Did you just sort of observe it as they were walking
12 around the house?

13 A. Just when they were at the door and came in, I could
14 see it.

15 Q. They never brandished the firearms, right?

16 A. No.

17 Q. They never even talked about them, right?

18 A. Only when I had scissors that he didn't want me to
19 shoot him -- shoot me.

20 Q. When in the bathroom changing your colostomy bag,
21 there was mention of it, but other than that, Jeremy and
22 Kyle never talked about their firearms, right?

23 A. Right.

24 Q. And they didn't talk about the handcuffs during that
25 portion of the interview either?

1 **A.** No.

2 **Q.** Or point them out to you or anything like that?

3 **A.** No.

4 **MS. WOODWARD:** If I could just have a minute,
5 your Honor. No further questions.

6 **THE COURT:** Thank you.

7

8 **REDIRECT EXAMINATION**

9

10 **BY MS. ROBINSON:**

11

12 **Q.** Mr. Evans, is it fair to say that part of the reason
13 you were surprised of the officers being at your house is
14 that you've never been awoken out of your sleep before by
15 agents at your door?

16 **A.** Yes, that's true.

17 **Q.** The prosecutor asked you questions about how
18 enthusiastic you were when they showed up, and your
19 testimony was that you were still out of it, you were
20 still feeling drunk, and still feeling anxious when they
21 came to your house, right?

22 **A.** Yes.

23 **Q.** They talked a little bit with you about your
24 decision to decline your son's call when he was trying to
25 get through to you. Why did you decide not to take his

1 call?

2 A. Because they were asking questions.

3 Q. Why did you decide not to take him to school that
4 day?

5 A. Because they were there. That's why I didn't take
6 him to school. I probably wouldn't have anyway. I would
7 have declined because I had been drinking, and his
8 grandfather could drive. So his grandfather drove him.

9 Q. Did you feel like you had the freedom to stop the
10 interview, take your son's phone call, and take him to
11 school that day?

12 A. No, I didn't.

13 Q. On the times that you were moving around the house
14 to get the photos album and the receipts and so forth,
15 were you ever out of the officers' line of sight?

16 A. For a brief second when I grabbed the photo album
17 because they were watching me go down the hallway, and
18 other time I got up, they said that I was making him
19 nervous.

20 Q. You were making him nervous?

21 A. By moving around, yes.

22 Q. Do you remember which agent said that?

23 A. No.

24 Q. It was your testimony that you never asked the
25 officers to get you a lawyer, but did you have some

1 conversations with them about a lawyer?

2 A. Just probably about when they were reading me these
3 rights.

4 Q. Do you remember what that conversation was?

5 A. Just Miranda Rights what you see on TV or whatever.

6 Q. Do you remember at any point in this conversation
7 asking the officer if you should get a lawyer?

8 A. I asked if I should get a lawyer, and they said as
9 long as I cooperate with them, I didn't need one.

10 Q. Why did you feel it was necessary to ask them if you
11 needed a lawyer?

12 A. At that time I didn't really know that I was going
13 to be investigated, that they were going to search my
14 computers. That was just prior to their forensic guy
15 coming in and finding anything on the computer.

16 Q. Was there anything about the tone of the
17 conversation that made you begin to think that you would
18 need a lawyer?

19 A. When they handed me this consent form that's when
20 the whole thing changed. When my demeanor changed, so did
21 theirs at the same time.

22 Q. And the last question that I have for you, the
23 prosecutor said -- and you agreed -- that there is no way
24 that you could you read -- the officers could read your
25 mind or get inside your head and figure out what was going

1 on with you, and you would agree with that, right?

2 A. Yes.

3 Q. Did that change the fact that you were feeling
4 extremely anxious while this conversation was happening?

5 A. It wouldn't change the fact.

6 Q. Did it change the fact that you were having suicidal
7 thoughts at that time?

8 A. No, it wouldn't change that.

9 Q. Did it change the fact that you were still feeling
10 the affects of the alcohol during this entire -- during
11 the entirety of the interview?

12 A. No, it wouldn't change that.

13 MS. ROBINSON: May I have one moment, your
14 Honor?

15 No further questions. Thank you.

16 THE COURT: Okay. Thank you.

17
18 (Witness excused.)

19
20 THE COURT: How do you wish to proceed with
21 the argument? Do you wish to do it orally or do it in
22 writing?

23 MS. WOODWARD: We can do it orally. It is up
24 to the Court.

25 MS. FITZHARRIS: I'm prepared to orally

1 argue, unless the Court would like a supplemental
2 briefing.

3 **THE COURT:** I'm happy to do it orally if you
4 think it will be a relatively short argument.

5 **MS. FITZHARRIS:** Hopefully so, your Honor.
6 Before we begin, is it possible to take a five minute
7 break to run to the restroom?

8 **THE COURT:** Well, how about I just give you a
9 week to file a supplemental argument?

10 **MS. WOODWARD:** Sure. I think if we were
11 going to file a supplemental, we probably would have to
12 have the transcript. Perhaps we would need more than a
13 week to get that.

14 **THE COURT:** Right. Okay. Let's do it that
15 way, and Ron says he can get that done in a couple of
16 weeks. So when it gets filed, we will set the date for
17 oral argument.

18 **MS. WOODWARD:** Okay. So we would get the
19 transcript and then have oral argument, or get the
20 transcript and file supplemental --

21 **THE COURT:** Transcripts, and then I could go
22 either way.

23 **MS. WOODWARD:** We'll talk and see what we
24 think.

25 **THE COURT:** Sounds good. Thank you. You

1 both did a fine job.

2 **MS. WOODWARD:** For the other motion, I would
3 be content to just submit it on the briefs, but there is
4 another motion out there. Perhaps if we had argument --

5 **THE COURT:** The second motion addresses the
6 search warrant.

7 **MS. WOODWARD:** And just for everyone here for
8 the sake of efficiency, I didn't make it clear in my
9 brief, but I would say to the Court, that we are relying
10 on the search warrant, not on the defendant's consent to
11 search the devices. So whether the consent form was
12 validly executed, you can take that question out, and just
13 do the four corners of the search warrant, and then the
14 custodial interrogation question that we were here for
15 today.

16 **THE COURT:** Okay.

17 **MS. FITZHARRIS:** If you want to do oral
18 argument on that motion right now --

19 **THE COURT:** Well, I don't see any reason
20 that -- you don't necessarily have supplemental argument
21 as it relates to that if you're relying on the search
22 warrant.

23 **MS. WOODWARD:** Correct.

24 **THE COURT:** And so that shouldn't increase
25 your burden at all, right?

1 **MS. FITZHARRIS:** Your Honor, the only reason
2 that I think the warrant has some play in this, is if the
3 government -- and Ms. Woodward has clarified the record
4 very clearly now that they are not relying on the consent
5 form -- but one basis is that if the search warrant is
6 invalid, and the -- it was used to obtain consent, then
7 the consent would also be invalid as part of the argument,
8 and so if government is relying entirely on the warrant as
9 the basis for the search, then there's no need.

10 **THE COURT:** Well, she has good faith argument
11 as to the warrant as well, right?

12 **MS. WOODWARD:** Yes, your Honor.

13 **MS. FITZHARRIS:** Yes, but again, whether
14 there's good faith reliance, if there's not good faith
15 reliance on the warrant, then again, consent is an issue.
16 So --

17 **THE COURT:** Okay. Why don't we get the
18 transcript, and then you can confer, and talk with the
19 Court about whether oral argument is the better way or
20 supplemental.

21 **MS. FITZHARRIS:** Okay.

22 **MS. WOODWARD:** Okay.

23 **THE COURT:** All right. Thank you, again.

24
25 (Proceedings concluded.)

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C E R T I F I C A T I O N

I, Ronald A. DiBartolomeo, official court reporter for the United States District Court, Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript has been prepared by me or under my direction.

s/Ronald A. DiBartolomeo
Ronald A. DiBartolomeo, CSR
Official Court Reporter

December 6, 2018
Date

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